



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/120
23 January 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Towards a culture of peace

Note by the High Commissioner for Human Rights

1. In its resolution 2000/66, the Commission on Human Rights requested the Office of the High Commissioner for Human Rights, "in coordination with the Bureau of the Commission at its fifty-sixth session, to organize, provide the necessary resources, including financial resources, and coordinate during the course of the International Year for a Culture of Peace, a panel/forum on a culture of peace, with participation open to Governments, non-governmental organizations and other interested organizations, focusing on the contribution of the promotion, protection and realization of all human rights to the further development of a culture of peace" (para. 5).
2. On 16 June 2000, the Office of the High Commissioner for Human Rights (OHCHR) and the University for Peace agreed to cooperate on implementation of the above-mentioned resolution. Under the terms of reference elaborated for this purpose, it was agreed that the Culture of Peace forum would be an integral part of the activities being planned for the Human Rights Day celebration on 11 December 2000 and would be guided by the broad theme of "Human rights education".

3. Accordingly, the Expert Seminar on Human Rights and Peace was held in Geneva on 8 and 9 December 2000. It was convened with the support of the Political Affairs Directorate of the Swiss Federal Department of Foreign Affairs, the Research Department of the Swedish International Development Cooperation Agency (Sida) and the Bank of Sweden Tercentenary Foundation. The report of the seminar also takes account of the presentations and discussions made at the intergovernmental forum convened by the High Commissioner on Human Rights Day (11 December 2000) on the topic "Human rights education: a contribution to a culture of peace".

4. The report of the Expert Seminar is annexed* to the present note. The annex is preceded by an executive summary.

* The annex is being circulated in English, French and Spanish only.

Executive summary

Human rights should become the fundamental guiding principle for sound economic and social development and for the anticipation and prevention of conflict and for the reconstruction and rehabilitation of post-conflict societies. Human rights principles must equally prevail in post-authoritarian regimes and in ongoing democratic transition and consolidation processes. It is an urgent challenge to the world community to achieve the integration of policies aimed at economic development with those aimed at the fundamental issues of equity, social development, human security, human rights and peace.

In order to make sustained progress in advancing human rights, initiatives at the international level must be effectively concerted with efforts at the local level where committed individuals risk their lives and non-governmental organizations (NGOs) and grass-roots organizations challenge inequity and the systematic violation of human rights. Civil society organizations (CSOs), universities and government agencies must maintain pressure to ensure that conflicts which have been resolved do not recommence in the absence of a culture of human rights and peace. National human rights action plans and continuous monitoring mechanisms such as those of ombudsman, national human rights commissions, parliamentary human rights bodies and human rights observatories can play a crucial role in this respect.

Special emphasis must be given to addressing the urgent problems and suffering which affect especially the disadvantaged and threatened - particularly women, children, the aged, youth, Afro-Latins, indigenous peoples, Roma, Dalits, migrants and refugees. Human rights are universal and indivisible - therefore strategic coalitions and improved collaboration are needed at every level if we are to achieve coherent and sustained progress towards achieving a culture of human rights and peace.

More than ever it is necessary to strengthen coalitions between the Office of the High Commissioner for Human Rights (OHCHR), United Nations agencies and civil society organizations to ensure the promotion and protection of the multiple facets of human rights comprising civil, political, economic, social and cultural rights.

Education is a fundamental tool to promote and consolidate peace and to advance human rights. But education must of course be accompanied by strong and effective measures in other areas. The difficult task of changing the attitudes and values which give rise to a culture where violence prevails can only be achieved through education at every level. States must not inflict suffering on their own citizens: parliamentarians, policy makers, administrators, officials, the judiciary and security and police forces at every level must equally be educated in a culture of human rights and peace. Also, there is a new and pressing need to increase the availability of qualified experts in every field of peace and security, from mediation and conflict prevention to post-conflict reconstruction and reconciliation. These two challenges must be the focus of enhanced programmes on human rights and peace.

There is an urgent need to develop practical training programmes and targeted research drawing on case studies of conflict resolution, successes in mediation, reconciliation and democratic transition processes for civil society leaders, parliamentarians, media, public prosecutors, police corps, teachers, judges, lawyers and United Nations staff.

It is time to start developing and implementing alternative approaches and innovation in policy-making and policy-targeting so as to strengthen human rights policies and to integrate these with other policies for economic and social development. This implies practical measures focused on a wide range of issues, such as: the provision of human rights "infrastructure"; the availability of decent work to provide dignity and hope and to secure a sound basis for the family and civil society, particularly in post-conflict reconstruction; the promotion of social healing and pro-peace public-awareness campaigns; the promotion of human rights education at every level, including the "training of trainers" through higher education and the use of multimedia training tools; the motivation and the reform of the judiciary and of civil police mandates and methods, etc.

The seminar made it clear that the promotion of human rights is essential for peace processes and the fostering of a culture of human rights and peace. The convening of the Expert Seminar on Human Rights and Peace has demonstrated that cooperation between OHCHR and the University for Peace (UPEACE) is an effective means to bring together world-class expertise to shed light on complex and sensitive issues.

Annex

**FINAL REPORT OF THE EXPERT SEMINAR ON HUMAN RIGHTS AND PEACE
(GENEVA, 8-9 DECEMBER 2000)***

I. INTRODUCTION

Background information

1. At its fifty-sixth session in March 2000, the United Nations Commission on Human Rights adopted resolution 2000/66 in which it requested OHCHR to organize a forum focusing on the contribution of human rights to the further development of a culture of peace. In May 2000, the High Commissioner invited UPEACE to assist OHCHR in the substantive preparations for this forum and in elaborating potential follow-up action-oriented activities related to the further promotion of human rights and education to promote a culture of peace.
2. Responding to this request, UPEACE convened the Expert Seminar on Human Rights and Peace on 8 and 9 December at the Palais Wilson in Geneva. The meeting involved some 30 leading experts from notable research and academic institutions in different parts of the world, as well as intergovernmental institutions, non-governmental organizations and independent experts. Ambassador Mohamed Sahnoun (Algeria) acted as Chair and Professor Paulo Sérgio Pinheiro (Brazil) as Rapporteur.
3. The Rapporteur, with the collaboration of all participants (see attached list of experts) and a volunteer drafting group composed of Ms. Dina Rodriguez (Peru), Mr. Miloon Kothari (India), Mr. Karl-Eric Knutsson (Sweden) and Mr. Lucas Assunção (Brazil, UPEACE), prepared a preliminary brief note which served as the basis for an exchange of views with government representatives and other participants at the intergovernmental forum held during the celebration of Human Rights Day at the Palais Wilson on 11 December 2000.
4. This final report, prepared by the Rapporteur together with Mr. Assunção, takes full account of the expert seminar's deliberations and of aspects of the discussions held at the intergovernmental forum between country delegations, heads and senior staff of intergovernmental organizations and CSOs and the experts invited by UPEACE. A number of experts kindly made further comments on the preliminary note and these have also been integrated in the present version.

* Submitted to the United Nations High Commissioner for Human Rights by the University for Peace.

5. This report comprises four main sections. The first section presents background information and outlines previous and ongoing contributions to building a culture of peace. The second section summarizes the discussions during the expert seminar and intergovernmental forum, as well as the policy notes and case studies commissioned by UPEACE from the independent experts for the seminar. The third section draws some conclusions from the lessons learnt from experience and the final section presents a selection of concrete proposals for action proposed by participants at the expert seminar.

6. Several Member States present at the intergovernmental forum requested that this independent report be transmitted to the Commission on Human Rights in 2001.

Public awareness at the international level

7. The United Nations Educational, Scientific and Cultural Organization has served as the focal point within the United Nations system for the follow-up to and implementation of the Declaration and Programme of Action on a Culture of Peace (General Assembly resolution 53/243). This important statement by the international community stands as a reference guide for specific initiatives by Governments, intergovernmental organizations and CSOs. An important follow-up to the Declaration relates to the forthcoming International Decade for a Culture of Peace and Non-Violence for the Children of the World to commence in 2001. Public-awareness campaigns, academic conferences and the establishment of UNESCO Chairs on Human Rights, Peace, Democracy and Tolerance in universities in all regions of the world are helping advance the goals promulgated in resolution 53/243.

8. This report has also benefited from the experience shared with the expert seminar by participants from several intergovernmental agencies with a continued commitment to the promotion of human rights and peace such as OHCHR, UNESCO, the United Nations Development Programme, the World Health Organization, the United Nations Children's Fund and the International Labour Organization, as well as from CSOs such as Human Rights Watch, Amnesty International and WSP International (formerly, the War-torn Societies Project). Even though numerous initiatives have addressed the building of a culture of peace the expert seminar emphasized that due attention must be paid to the practical implications of those valuable efforts. The dispersion of these efforts must be overcome. More than ever it is necessary to strengthen coalitions between the OHCHR, United Nations agencies and CSOs to ensure the promotion and protection of the multiple facets of human rights comprising civil, political, economic, social and cultural rights.

9. Since October 1994 the University for Peace has been conducting in Central America a programme for a culture of peace and democracy coupled with Master's degree courses in the field of Human Rights and in related areas. This programme has accumulated a wealth of experience on the seven Central American countries and has contributed to the peace-building and democratization processes in some cases, particularly through training activities to promote a culture of peace.

10. The programme has been conducting research, training and education activities and has produced a significant variety of academic texts and didactic materials. It has established a strategy of collaboration and building of partnerships with governmental and non-governmental organizations, academic institutions, community organizations and professional and labour organizations.

11. At the European Union level, a European Master's Programme on Human Rights and Democratization, coordinated from the University of Padua, Italy, has since 1996 experienced success in the training of mid-career and young professionals in international human rights law. The programme has succeeded in establishing an effective partnership with distinguished academic institutions and research centres in Europe and has counted on concrete contributions from regional governments and sectors of the armed forces in Italy. An expansion of this experience, possibly in association with training programmes under development at the University for Peace, may also benefit students and professionals from other regions.

II. ON HUMAN RIGHTS AND PEACE

12. Human rights, peace, democracy and sustainable development are four aspects in the life of nations that are closely linked and which reinforce one another. These four elements must constitute the foundation for an integrated approach for a culture of human rights and peace. Peace cannot exist or be sustained if human rights are not respected. Likewise, as frequently pointed out by the Secretary-General Kofi Annan, peace is a prerequisite for development - which in itself is a human right. Human rights are attainable within real democracies that, at the same time, favour the conditions needed to generate sustainable development. Faced with this reality, the pursuit of a culture of human rights and peace requires education on all levels and in particular human rights education as a key instrument for change.

On a culture of human rights and peace

13. A major problem in contemporary societies is the tendency towards a rigid categorization of culture which has led to policies of exclusion and/or of homogenization leading to the disrespect of cultural diversity. Attitudes are moving from tolerance and cooperation towards exclusion, the construction of cultural, ethnic and religious boundaries, gender violence, including the rape of women, and the destruction of whole communities and their cherished cultural heritages and traditions.

14. As a result we are witnessing in many areas not the building of peace but the spread of violence, which has reached unacceptable proportions. Its consequences on society are multiple. WHO has estimated that in 1998 2.3 million people died from violence in the world. From these deaths approximately 1 million (42 per cent) resulted from self-inflicted violence, 750,000 (32 per cent) from interpersonal violence in homes and communities and 600,000 from wars and other forms of collective violence. Civil wars, endemic violence, racial discrimination and xenophobia provide graphic indicators of this process. The most affected groups include, in particular, women and children, particularly child soldiers, the aged and handicapped, economic migrants, refugees, indigenous peoples and children.

15. Cultural identities, which are simultaneously inclusive and exclusive, have always existed. In themselves, identities and the cultural traditions on which they are built may not have changed much. What have dramatically changed are the conditions which made it possible and desirable for different identities to live together within a shared social and cultural space. What is new is the threat - indeed the purpose - to invade the identities of others and destroy them.¹ This underlies the urgency to protect human rights and promote understanding, respect and tolerance for constructive coexistence and peace.

16. On the other hand, we must acknowledge that the "ethnicization" of conflicts or a *politique identitaire* may also trigger violence: these tendencies reduce solidarity towards the victims of violence. As a result, those victims are seen as foreign and even dehumanized persons. When peoples' identities are narrowed down to a single focus, social divisions become deeper and more rigid. Ethnicity is a deeply emotional basis upon which violent mobilization can be triggered against "the other", often resulting in the dehumanization of the other group. Discrimination against and oppression of specific groups are, in consequence, aggravated.

17. Fostering understanding and openness to cultural diversity enables one to look into one's own self. The full understanding of the diversity among cultures and among peoples becomes a prerequisite for establishing "peace with one another, peace with our environment and peace with ourselves", as UPEACE President Maurice Strong pointed out in opening the expert seminar.

18. It is more urgent than ever to focus attention on the responsibilities and duties of the national elites to avoid the perpetuation of social injustice and privileges. Likewise, it is equally important to recall the moral obligation and responsibilities of developed nations for the realization of human rights and the struggle against poverty worldwide. There are positive causal links between the realization of one right and other rights such as the rights to food, to free speech, to education and so on. These rights directly improve human freedom and human development. They can also mutually reinforce each other.

19. We must look for spaces for the promotion of human rights in areas ravaged by conflict. There is no need to await the end of a war or conflict to support human rights initiatives. Burundi, where the Ministry for Human Rights has supported initiatives to promote and protect human rights in civil society during the ongoing armed conflict in the country, offers a good example. At the same time, for these initiatives to succeed, people must be consulted about the human rights and peace programmes introduced. Genuine and sustained consultation and dialogue with the local communities is essential for the promotion of such programmes. The groups afflicted by conflicts or violence must be able to identify themselves with the priorities proposed in programmes led by the Government and CSOs.

20. At the level of society, respect for civil and political rights, including the right to elect government freely, allows the disadvantaged to have a voice in the promotion of social, economic and political development. For a political regime to be democratic it must aim to meet the social needs required for the sustainable human development of its population. The challenge is not to launch a few scattered initiatives in favour of the poor but to guarantee all rights to everyone and to strive to achieve this high purpose. The aim of democracy is the effective implementation of all the human rights recognized by the Universal Declaration.

21. National institutions for the promotion and protection of human rights must be supported. Building a wide alliance of public agencies, CSOs, the media, universities and the private sector increases the efficacy of efforts for the advocacy and accountability for human rights. In several countries, CSOs are extremely mobilized and are sometimes even more active than State bodies. In every continent, national human rights commissions strive to ensure that the laws and regulations for realizing the Governments' human rights policies are effectively enforced. According to the Inter-Parliamentary Union, of the existing 120 national parliaments today, nearly half have formal bodies dealing with human rights. Their mandates reflect national contexts, but all share the common goal of ensuring that the universal human rights standards are translated into law - and realized in practice.

22. A culture of peace and human rights is more than the absence of violence. Promoting a culture of peace requires continuity and ongoing attention, before, during and after conflicts. However, the mere promotion of peaceful behaviour will not be enough. It will also require removing the restrictions and social tensions that are created by inequality, poverty, social exclusion, racial discrimination and violations of civil and political rights.

Human security

23. The objectives of human security are the safety and survival of people and freedom from fear and physical violence. Inequality, deprivation, social exclusion and denial of access to political and civil rights contribute to the breakdown of the social fabric that binds humanity. Not having a fair chance in life is one of the most incendiary root causes of violence and conflict. When human security is jeopardized, the deterioration may be registered in statistical terms, e.g. number of casualties in armed conflict, crime rates, numbers of youth murdered, number of women and children subject to abuse, etc. Such indicators are an important tool to evaluate realization of human rights and peace and an early warning signal for conflict prevention.

24. A wide variety of approaches are being attempted with a view to reducing current levels of violence. These include the enhancement and respect of human rights, strengthening judicial systems, promoting preventive diplomacy, human rights education and economic development. In operational terms, freedom from fear and physical violence imply basically the existence of the rule of law, public order and peaceful management of conflicts. Their normative basis is the set formed by human rights law, international humanitarian law and international refugee law.

25. As a consequence, the agenda of human security must take into consideration three main elements. The first concerns the importance of preventive action, the problems faced by such action, and how prevention can be more effective. The second concerns the means of violence, mostly small arms and light weapons - even though it must be recognized that violence is caused by a combination of many and diverse factors. The third element concerns the imperative of ensuring that the efforts undertaken by Governments and by civil society actors are mutually reinforcing.

26. The seminar has called attention to the fact that prevention of conflict, of violence and of crime, is substantially more cost-effective than repairing the damage in the aftermath, when violence has erupted. This cost-effectiveness is reinforced by moral considerations, recognizing the casualties and suffering that will come about if nothing is done. There is a vital connection

between human rights violations and the outbreak of conflicts. Human rights violations are usually warning signals for the emergence of conflicts. Frequently, there is no lack of early warning signals, but incapacity and unwillingness to take early action. In that respect, there can be no excuse for inaction: "We know what needs to be done. What is now needed is the foresight and political will to do it".²

Freedom from fear

27. No other aspect of human security is so vital in practice as security from physical violence. In both poor and rich nations peoples' lives are threatened by violence which can take many forms, as highlighted in the *Human Development Report 2000*. Peoples' lives are menaced by violence from the State (physical torture, arbitrary arrest and detention); from other States (war, support for oppressive regimes); from other groups of people (ethnic conflicts, crime, street violence, organized crime and terrorism), as well as by threats directed at women and girls (rape, domestic violence) and at youth and children (child abuse).

28. For years, civil society movements have mobilized public opinion to eliminate such threats and networking with international NGOs has also contributed to strengthening such attempts. At the global level, several international instruments such as the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child - ratified by 119, 165 and 191 countries respectively - protect individuals against torture and ensure the security of women and children. Despite such progress, one of the main failures of many contemporary States and societies is their incapacity to ensure freedom from fear to their overall population.

29. Large contingents of poor people are living today with increased crime, corruption, violence and insecurity amidst declining social cohesion. Few poor people have access to justice and the protection of the police (in many cases the poor are targets for arbitrary repression). In some societies, officials and criminals are often accused of being in collusion and, instead of being seen as protectors, police are largely viewed negatively for their indifference, for their role in intimidation, corruption and crime, and for their ability to instil fear, to harass and to brutalize.

30. Values and principles of peace cannot prevail and become real in communities threatened in their daily lives by extremely high rates of mortality, arbitrary practices of State agents or the terror of organized crime. Poor people frequently share a general feeling that lawlessness has increased, tending to degenerate into crime. More than ever the State, which has the monopoly of the use of legitimate physical violence, must focus its efforts to play an active role in building peaceful societies.

31. Peace in modern societies requires close attention to the responsibilities and duties of the national elites to avoid the perpetuation of social injustice and privileges for a few. Likewise, it is equally important to recall the moral obligation and responsibilities of developed nations for the realization of human rights and the concomitant struggle against poverty worldwide. In this regard, the continuation of the outright arms race must be addressed as a major disservice to the promotion and consolidation of a culture of human rights and peace.

Globalization and human rights

32. Recent massive economic, political and social changes have isolated individuals and fragmented communities in many parts of the world. For the poor, the situation is especially acute because they have less capacity to adapt to dislocation. The increased international flow of trade, capital and information has delivered undeniable wealth and opportunity for many. Global economic integration has indeed created opportunities for people around the world. However, there is a marked discrepancy among countries with respect to gains from expanding trade, as well as access to foreign direct investment and new technologies. Many of the poorest countries are marginalized from these emerging opportunities. The income gap between poorest and richest countries is widening.

33. There is a widespread uneasiness about some of the associated and parallel ills of rapid globalization. Income inequality is growing, as is the number of people in abject poverty. The current overarching policy goal of liberalizing and promoting trade at any cost leaves little or no room for human rights considerations, even when the ultimate intention is income growth.

34. Globalization, through the sustained promotion of trade liberalization and heightened competition for new markets, has not resulted in unequivocal gains for all sectors of societies. The fact that not all sectors have enjoyed equally the benefits and opportunities of globalization and the associated increase in communication flows is not conducive to the establishment of a culture of human rights and peace, which fully protects the rights of minorities. Relevant international human rights standards exist but are not uniformly ratified, effectively enforced, or adequately integrated in rules to influence the multilateral trading system.

35. The debate during the intergovernmental forum called attention to the need for a greater involvement of financial and trade organizations, such as the Bretton Woods institutions and the World Trade Organization, in the commitment for the protection of human rights worldwide. A world economy increasingly integrated through trade interests and capital flows does not necessarily lead to the improvement of human rights. However, such improvement may turn out to be essential for the sustainable development and stability of the world economy and for tangible, widely shared improvements in human welfare.

36. The number of migrant workers and trafficking victims has grown with international trade, yet abuses against them remain largely ignored. Experience shows that global economic integration is no substitute for a firm parallel commitment to defending human rights. Millions of people who are excluded from the global economy are forced to accept it on unsatisfactory terms. In this divisive debate, human rights offer a promising framework to address the ill effects of globalization.

The quest for decent work in stable societies

37. Lasting peace depends on a number of social, economic and political measures. Critical among them is access to decent work. Unfortunately, promoting decent work continues to receive inadequate attention in conflict prevention, conflict resolution, peace-building and

post-conflict communities. The access to decent work is a basic human right and a critical factor in preserving social stability and cohesion. It should constitute a central element in a comprehensive strategy for achieving long-lasting peace.

38. Decent work is work that meets peoples' human aspirations and not only aims at generating income; it is human security for themselves and their families, and should be available without discrimination or harassment, providing equal treatment for women and men.

39. It helps to reorient peoples' minds from conflict and destructive activities to constructive occupations. It also helps improve material welfare and reduce poverty, social exclusion and disintegration, often one of the structural root causes of armed conflicts. Such productive activities provide human and family dignity and a channel for social healing as a means to reduce the plight of vulnerable groups including jobless youth, demobilized combatants, disabled people, refugees, returnees and internally displaced persons. Decent work is of decisive importance for female-headed households, whose numbers soar during armed conflicts, and in communities deeply affected by endemic violence and victimization.

The role of human rights education

40. Education is a fundamental element in all processes that aim to build a culture of peace and human rights. It is more than the provision of information; it is a lifelong, value-based process of improving knowledge and action within the framework of the principles and provisions of the international instruments on human rights.

41. This broad capacity-building effort will require more than education for a culture of human rights and peace: people's and communities' participation will be essential, together with the genuine commitment and support - including institutional and capacity-building measures - of Governments, the private sector, the research and professional communities, as well as social movements in civil society.

42. In order for human rights education to be pragmatic, relevant and effective, special efforts should be made to train educators who come from different backgrounds and to develop methodologies that will facilitate their work with diverse groups of students. The training should also promote educational strategies - for educators as well as students - that extend into the community in order to link theory with practical social realities and experiences. Each engaged person may be requested to play a part in effective human rights advocacy in the community through becoming a human rights "educator", "monitor" and "documenter".

43. Human rights education should draw on past successes and failures in the promotion of a culture of human rights and peace. For that reason, education efforts require underlying research activities, documentation on specific cases studies and, to the extent possible, the development of human rights indicators. Due attention must be paid to the "multiplier's role" of certain groups in society such as the media, teachers, public prosecutors, civil police staff, etc.

III. LESSONS LEARNT

Civil society organizations: navigating in uncharted waters

44. The protection of human rights, the building of peace after armed conflicts and the end of endemic violence continue to be the principal challenges for civil society in the search for peace. CSOs are forced to find new ways to search for peace and to define new strategies to create viable mechanisms for the protection of human rights, appropriate for environments where violence and conflict do not take the form of conventional war.

45. For more than a decade, international organizations have promoted the principles of a culture of peace. Human rights and peace activists have bravely endeavoured to confront violence and war. Human rights and culture of peace education have helped them to develop a clear sense of the problems to be addressed. However, most continue to navigate in uncharted waters because they have not been provided with specific strategies to struggle for peace in post-conflict situations and societies in a state of no-war and no real peace either. It is time to address this need, taking into account the specificity and historical background of each context and the obstacles encountered in the formulation of appropriate strategies.

46. The absence of the rule of law and lack of access to the justice system for non-elites; structural racism and racial discrimination; the lack of accountability of Government and the non-implementation of social, economic and cultural rights must all be necessarily tackled to strengthen peace in society. It is critical to raise public awareness of the lawless violence that often plagues countries after the end of conflicts and the return to democracy. It is also of fundamental importance to identify with rigour the serious shortcomings in the performance of the judiciary and the ways in which impunity undermines the rule of law.

47. Today, post-conflict societies and democratic consolidation processes require new linkages between the spheres of civil society and political institutions. In this new context, CSOs face unexpected challenges that go beyond denunciation of abuses through documentation or the promotion of a culture of peace. CSOs are compelled to intervene in the moulding of alternative agendas for the new democratic State, and in democratizing public policies that can contribute to a new environment conducive to sustained peace.

Building awareness and involving people

48. To promote human rights and peace, strategies must be defined at the level of civil society, both to build awareness of human rights violations and to find creative mechanisms to combat them effectively. Local civil society organizations in partnership with State agencies, universities or research centres have a decisive function in monitoring human rights. Citizen participation must be facilitated to encourage civil society to voice its concerns and needs, to incorporate different viewpoints into the agendas of Governments and to enforce the oversight of government agencies and practices. For this purpose, it is essential to create partnerships, networks and coalitions.

49. While Governments have the responsibility to provide security for their citizens, this task also requires the collaboration of key social actors. Such collaboration becomes particularly important when the institutional capacity of States is increasingly becoming weak in the era of globalization, for diverse and different reasons in each country. More than ever, it is necessary to find ways to strengthen the capacity of local institutions to support "bottom-up" social control. Civil society organizations must also develop their capability to establish "early warning systems" to prevent violence and gross human rights violations.

50. Education, monitoring and documentation are vital elements of the process of "knowing and claiming human rights" as necessary steps towards truly sustainable human development. Communities should be encouraged to bring creativity into these processes, using testimony, community and city hall meetings, street theatre, art and informal dialogue forums. The results of monitoring and documentation can then be collected and shared to ensure the inclusion of the full spectrum of the community's individual and collective human rights and to provide a systematic analysis of human rights violations. Vital to human rights advocacy is the creation of mechanisms for accountability. In this respect, innumerable grass-roots organizations have succeeded in mobilizing resources and making them available to poor communities.

51. One of the possible strategies to fulfil these objectives is the establishment of a network of human rights/human development observatories. A pilot project launched in May 2000 has been developed by the Centre for the Study of Violence of the University of São Paulo, Brazil, under the auspices of the Secretariat of State for Human Rights, the Brazilian Ministry of Justice, OHCHR and the United Nations Development Programme. These observatories, established as a triangular cooperation among universities or research centres, CSOs and State institutions in charge of accountability, will contribute to building databases and to developing indicators on a selected set of human rights to be monitored. Additionally, observatories can serve as early warning systems.

52. Human rights/human development observatories help to build critical partnerships with existing State institutions (for instance, public prosecutors and auditing courts) so as to exercise "bottom-up" social control over the performance of Governments and the effectiveness of their public policies to reach the poor.

53. Another valuable initiative intending to produce a blend of ethical thinking and action towards influencing public human rights policies is the experience of human rights education and the ongoing formation of a citywide human rights community in the city of Nagpur in central India. In this process two international organizations, the People's Decade for Human Rights Education and Habitat International Coalition and its Housing and Land Rights Committee, have joined efforts with the Indian organization Youth for Unity and Voluntary Action and local community organizations working with issues of the rural and urban poor.

Community-based "ombudsgroup" approach

54. In the discussion of human and child rights, the creation of a national ombudsman institution is often suggested to support government action and focus public attention on the urgent and most pressing issues. This can certainly be an important step. However, it should

preferably be combined with and supported by a wider network of voluntary local "ombuds" groups, which can build up their own capacity over time and serve as advocates and monitors of efforts to promote human rights and peace. Only then can real and radical progress be expected to occur.

55. Combined with centrally based approaches, such community initiatives could become a viable proposition through which the relevant monitoring of progress - or the lack of it - on the local level can be achieved. With the help of simple reporting routines, visits from central "ombudsman" functions, training and exchange of staff and through pragmatic networking with other groups and NGOs, as well as with politicians, officials and independent experts, the efforts can be strengthened and energized. If a sufficient scale could be reached, "community ombudsman groups" could become a crucial tool for long-term and sustainable mobilization and implementation of a human rights and peace agenda.

IV. PROPOSALS FOR PRACTICAL ACTION

56. For human development to be truly sustainable it requires the mainstreaming of human rights into development and economic policy-making as a regular and necessary component of such policies and also the full integration of the consideration of human rights into international development cooperation. Promoting a culture of human rights and peace is considerably less costly in political, human and financial terms as compared with the remediation of conflicts once they have erupted. With the ultimate goal of contributing to the prevention of conflicts, consolidation of peace processes and overcoming the new forms of violence in modern societies, the expert seminar made the following proposals for practical action:

1. The international community

57. Governments are called upon to fulfil the commitments made in the Vienna Declaration and Programme of Action of the World Conference on Human Rights (1993) to prepare national plans of action on human rights and to urge those countries that have already prepared such plans of action to live up to their commitments.

58. The proliferation of small arms and light weapons³ represents a serious threat to human security. The unchecked spread of these weapons has exacerbated inter- and intra-State conflicts, contributed to human rights violations, undermined political and economic development, destabilized communities and devastated the lives of millions of people. States should strengthen their commitments to implement the principles of international humanitarian and human rights law with respect to the transfer of small arms and the banning of landmines.

59. States should respect and implement United Nations arms embargoes, seeking to destroy the arms seized from such embargoes and effectively prevent their resale.

60. States should seek to develop an international code of conduct governing the licit transfer of small arms. Such codes of conduct should prohibit the sale of small arms to States that consistently violate human rights.

61. Mechanisms to facilitate better understanding and to encourage joint approaches among agencies involved in violence prevention should be developed. It is proposed that a meeting of all United Nations agencies and relevant NGOs working in the area of violence prevention be organized jointly by WHO, UPEACE and OHCHR.
62. Specific projects directly related with the control of violence were discussed during the expert seminar. It was felt that these valuable initiatives should continue to receive support. One such project is the Small Arms Survey, sponsored by the Government of Switzerland in conjunction with other interested Governments. It is a major contribution to international efforts to constrain the proliferation of small arms and light weapons. Another project is the World Report on Violence and Health being prepared by WHO with several other agencies, which will be an important contribution to the better understanding and prevention of violence.
63. Peace accords must include provisions requiring full respect for human rights and their inclusion in the national judiciaries in order to ensure accountability and the effectiveness of the rule of law.
64. It is of fundamental importance to foster discussion and promotion of the concept of human security as being equally important to that of State security, and to promote new attitudes to development in the donor community, linking development assistance to conflict prevention. UPEACE is launching a major programme and partnership network, in cooperation with universities in different regions, to promote teaching and research in the field of human security.
65. There is a need to develop practical training programmes drawing on case studies of conflict resolution, targeted research and successes in mediation and healing for civil society leaders, parliamentarians, media, public prosecutors, police corps, teachers, United Nations staff and lawyers. The progress of human rights in many real-world situations comes about through the engagement of individuals and small groups that risk their well-being, and sometimes their lives, to challenge abuses. UPEACE will undertake case studies and analysis to identify different approaches which have been used, integrate this material into courses and make it widely available.
66. It is of paramount importance that, once a conflict has been resolved, the international community keep its attention focused on the post-conflict situation to ensure that the restoration of the society is sustained. The international community must also make serious efforts to ensure that its intervention in conflicts do not aggravate the situation further, as was experienced in Somalia and Sierra Leone.
67. The expert seminar acknowledged that the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in Durban, South Africa, in 2001, will be an important opportunity to consider ways and means to ensure improvement in the application of existing international human rights law standards and their implementation in order to combat racism and racial discrimination. The World Conference will also contribute to increasing the level of awareness about the scourge of racism and racial discrimination.

2. National level

68. Perpetrators of human rights abuses, especially systematic violations of women's rights and the human rights of disadvantaged groups such as children, indigenous peoples and racial and ethnic minorities, must be brought to justice.

69. Civil society organizations, universities and government agencies ought to keep up the pressure to ensure that conflicts that have been resolved do not reappear in the absence of a culture of human rights and peace. National human rights action plans and continuous monitoring mechanisms such as ombudsmen, national human rights commissions, parliamentary human rights bodies and human rights observatories play a crucial role in this respect.

70. The construction of a culture of human rights and peace must aim to overcome the underlying causes that result in urban crime, social disruption, economic inequities, marginalization, racism, xenophobia, etc.

71. It is time to start considering alternative approaches and innovating in policy-making and policy-targeting. Focus on the provision of decent work in post-conflict reconstruction and social healing, use of multimedia training tools, positive pro-peace public-awareness campaigns, engagement of the judiciary and reforming of civil police mandates and methods are but a few examples.

72. In particular, it is necessary to develop a more coherent approach and better coordination between the different ministries, agencies, NGOs and other institutions which together aim to promote human rights and economic and social development. This also requires better horizontal coordination among the international agencies and other actors who seek to assist the processes of conflict prevention, peacekeeping and post-conflict reconstruction and rehabilitation in the context of socio-economic development. UPEACE is planning to undertake a project to consolidate and evaluate experience on this aspect, in collaboration with several academic and operational partners.

73. Human rights principles must be introduced in local, regional and national institutions (human rights infrastructuring).

74. Full respect for human rights entails the introduction of consistent laws, the creation of specific and permanent institutions and consistent policies supported by educational and civil society networks.

75. A new role for the military forces should be promoted through the internal democratization of military institutions, reconversion (from war-defence purposes to combating crime in society, ensuring the full respect of civil and political rights) and its enhanced internationalization (based on international law of human rights and humanitarian law and the Charter of the United Nations).

3. Education

76. In order for human rights education to have a significant impact in its contribution towards building and maintaining peace, it is necessary to work with all sectors of society, to expand the coverage of the work, to define appropriate content, to select the most adequate methods and to offer relevant didactic materials. The ultimate goals are: (a) to empower people and increase their self-esteem; (b) to raise awareness about human rights so that individuals themselves can promote and protect them; (c) to transform people's attitudes regarding conflicts; and (d) to enable understanding on how to live with other culturally diverse groups.

77. In the area of education, strategies should, inter alia:

(a) Increase and deepen human rights education and education for democracy and non-violence at all levels - from early childhood education to universities - aiming at the creation of a culture of peace and incorporate such education into school curricula. The education must be organized and carried out in a holistic way, aiming for theoretical, emotional and ethical knowledge and understanding to be internalized, and foster behaviour and action consistent with human rights;

(b) Incorporate human rights, a culture of peace and democracy into the basic general requirements of any vocational and university training, with an emphasis on topics related to the diversity in culture, gender and religion, as well as to the issue of access to natural resources as a potential source of future conflicts. The goal should be to enhance competence and capacity on human rights principles and practice in all trades of work and professional specialities;

(c) Provide human rights training to civil servants in all sectors, the armed forces, police and representatives of the judiciary system. Such training should also be organized for members and leaders of political parties and for members of parliament and other political assemblies;

(d) Promote human rights education among members and leaders of political parties throughout civil society and government for the protection of all. In addition to issues of human rights, peace and democratization, education programmes should also cover the specific circumstances and problems of women, children, youth, migrants, the disabled, indigenous peoples, HIV-affected persons and other especially vulnerable groups;

(e) In all these areas of education, the basic legal instruments and documents should be made widely available, including the Earth Charter which provides a coherent presentation of the ethical and practical relationships between economic and social development, the conservation and protection of the environment, human rights, democratization and the prevention of conflict.

78. UPEACE is engaged in preparing and implementing Master's degree and training courses on many aspects of human rights and peace. It will continue to provide such courses at its main campus in San José, Costa Rica, and it will also disseminate course materials and methodologies to universities, institutions and other concerned groups.

4. Media

79. Mass media and journalists have in many situations become the chief chroniclers, the primary scribes of a rapidly changing world. In many societies, newspapers and the news industry are fiercely partisan, but do not engage in objective investigation. Engaging and training the media and other society agents and multipliers becomes a primary strategy to promote a culture of human rights and peace. This issue will be a central focus of the Media and Peace Institute now being planned by UPEACE.

80. Media organizations must develop codes of conduct and mechanisms to prevent the dissemination of violence. Respect for human rights, peace efforts and reconciliation should have the same or greater standing than conflict and violence in media broadcasting.

81. The media and journalists should be encouraged - through special training courses and other means - to help overcome stereotypes, prejudices and racism in societies and to help break down the barriers which create exclusion and lead to the stimulation of violence and revenge.

5. Documentation and research

82. There is a crucial need - also as the underpinning for the improvement of education on human rights - to strengthen documentation, research and reporting on the nature of conflicts within their different social and cultural contexts. Similarly, research is urgently needed on the progress of human rights implementation as well as on its deficiencies and on human rights violations. It is especially important to publish systematic and consolidated statistical reports on violations of the human rights of women, children, refugees, immigrants, displaced persons, prisoners, minorities, and large groups of impoverished and socially excluded peoples and other especially vulnerable groups. It will also be important to analyse changes and violations of human rights due to political and economic transformations.

83. This will require reliable empirical data, mapping of experiences and experiments, new efforts of comparative research and, not least, much improved approaches towards interdisciplinary cooperation.

84. A principal purpose of research and documentation efforts should be to establish a bridge between the academic and research communities and busy national and international officials and decision makers, including business leaders, so as to bring the insights and analysis of scholarship to improving the focus and results of policy.

6. Tools and indicators

85. Further improvement of tools and methodologies for the documentation, planning, reporting, implementation and assessment of human rights action represents an important priority. For this reason, research and development need to be expanded on concrete methodological issues, including the creation of indicators, quantitative as well as qualitative. This is also essential for efforts to stimulate research and to improve the theoretical quality of applied research efforts with a view to supporting informed social and economic policy-making.

86. Indicators enable the consistent organization of information in a measurable and comparative manner. They must be dynamic in order to reflect the permanent changes in the realization or denial of rights, and show the links between human rights violations and insufficient human development. Indicators should ideally be disaggregated according to different categories: gender, income level, race, age group and geographical space.

87. Indicators of human rights are an important tool to measure progress or regress in the realization of all rights, without grading systems to "score" country performances or index countries by level of performance. The goal of developing indicators is to help monitor more accurately the realization of the rights enumerated in international human rights instruments.

88. The forum calls attention to the final report of the seminar on civil and political rights indicators which was held in Geneva from 27 to 29 September 1999, under the auspices of the OHCHR and UNDP. That workshop was an important step in a long-term process of developing a final list of technically sound civil and political rights indicators. The workshop resulted in a preliminary list of indicators on the administration of justice, democracy and participation and the security of the person.

Notes

¹ R. Kothari, "Escaping the Trap of Cultural Diversity", *Himal*, 1992, p. 16.

² Report of the Secretary-General on the work of the Organization, Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 1 (A/54/1), para. 61.

³ Small arms are automatic weapons of no more than 20 mm, such as submachine-guns, rifles, carabines and handguns, and light weapons are those which can be carried by an individual or by a light vehicle - including bazookas, rocket-propelled grenades, light anti-tank missiles, light mortars, shoulder-fired anti-aircraft missiles and hand-placed landmines.

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**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/121
16 March 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 8 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED
ARAB TERRITORIES, INCLUDING PALESTINE**

**Report of the human rights inquiry commission established pursuant
to Commission resolution S-5/1 of 19 October 2000**

GE.01-11872 (E)

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* Reproduced in English only.

I. INTRODUCTION

1. On 19 October 2000, the Commission on Human Rights adopted resolution S-5/1 establishing a commission of inquiry to investigate violations of human rights and humanitarian law in the occupied Palestinian territories after 28 September 2000 and to provide the Commission on Human Rights with its conclusions and recommendations (see annex I). In pursuance of this resolution, a human rights inquiry commission was established on 2 January 2001, comprising Professor John Dugard, (South Africa), Dr. Kamal Hossain (Bangladesh) and Professor Richard Falk (United States of America). Initially Professor Dugard and Dr. Hossain acted as Co-Chairpersons but, during the course of the visit to the occupied Palestinian territories (OPT), Professor Dugard was appointed as Chairman.

2. The Human Rights Inquiry Commission ("the Commission") held its first meeting in Geneva from 14 to 16 January 2001 to discuss its mandate, methodology and programme of action. It then visited the occupied Palestinian territories (OPT) and Israel from 10 to 18 February 2001. The full programme of the Commission appears in annex II.

3. On the evening of its arrival in Gaza on 10 February 2001, the Commission met with the Palestinian Authority President, Yasser Arafat, who gave the Commission an account of the situation from the perspective of the Palestinian Authority. From the programme contained in annex II, it will be seen that, while in Gaza, the Commission held meetings and discussions with members of the Palestinian Authority, non-governmental (NGOs), the Palestinian Red Crescent, the International Committee of the Red Cross (ICRC), international agencies (notably the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Special Coordinator in the Occupied Territories (UNSCO) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)), journalists, lawyers and members of the Palestinian Legislative Council. It also interviewed several young men who had been seriously wounded during demonstrations by gunfire from the Israeli Defence Force (IDF) and visited a hospital in Khan Yunis where it saw persons hospitalized as a result of gas inhalation. En route to Khan Yunis, the Commission visited the Qarara area, near the Kusufim road leading to settlements, where it saw agricultural land that had been bulldozed and houses that had been demolished by the IDF and it spoke with the occupants of these houses, who are now living in tents. At Khan Yunis the Commission visited the Tufar checkpoint adjacent to the Neve Dekalim Jewish settlement. While the Commission members were speaking to journalists at this point, two shots were fired from a nearby building at the settlement. This evoked a heavy response from the IDF base attached to the settlement, resulting in three casualties, two of which were serious. Thereafter, the Commission interviewed persons who had suffered as a result of gunfire or the destruction of property.

4. The Commission spent Wednesday, 14 February interviewing Israeli NGOs and Israeli interlocutors who provided the Commission with a broader understanding of the context of the conflict and the legal position adopted by the Government of Israel. On 15 and 16 February the Commission visited Ramallah, where it met with members of the Palestinian Authority, the Palestinian Legislative Council, the Palestinian Peace Negotiation Affairs Department, and Palestinian NGOs, lawyers and academicians. On the morning of 16 February, before leaving for Ramallah, the Commission met with the representatives of member States of the

European Union, whose views confirmed many of the opinions expressed by other interlocutors interviewed by the Commission. Later in the morning of 16 February the Commission spoke with Christian and Muslim leaders (including those responsible for the management of the Al Aqsa mosque) and met with Mr. Faisal El-Husseini at Orient House. On Saturday, 17 February the Commission travelled to Hebron, where it met with the Temporary International Presence in Hebron (TIPH) and the Mayor of Hebron. Owing to the tense security situation arising from the funeral of a person killed by IDF gunfire on the previous night, it was unable to visit "H2", the area of Hebron under Israeli military control. After leaving Hebron, it visited the Aida Refugee Camp near Bethlehem and inspected an UNRWA school and houses which had been heavily damaged by IDF shelling. Thereafter, it met with a wide range of interlocutors and journalists in Jerusalem.

5. While in Jerusalem, the Commission held evening meetings with widely respected Israeli academic and intellectual figures, who were able to inform the Commission about the legal context of the conflict and the Jewish settlements in the West Bank and Gaza and provide Israeli perspectives of the intifada. On the afternoon of 16 February, the Commission visited the East Jerusalem neighbourhood of Gilo, which had come under gunfire from the Palestinian town of Beit Jala. On the last day of its visit, the Commission met with an Israeli political scientist and a former Israeli IDF General.

6. At the request of the Commission, the staff of the United Nations Secretariat accompanying the Commission conducted a number of confidential interviews with victims in Gaza, Ramallah, Hebron and Jerusalem. The texts of these interviews were shared with members of the Commission.

7. The Government of Israel made it clear from the outset that it would not cooperate with the Commission. Two letters were addressed to the Government of Israel before the departure of the Commission for Israel requesting meetings with the Government; a final letter containing a similar request was sent while the Commission was visiting the area. Despite these efforts, the Government of Israel consistently maintained its policy of non-cooperation with the Commission. The Commission is, however, pleased to report that the Government did not in any way obstruct the work of the Commission and indeed facilitated its visit to Israel and the occupied territories by granting Dr. Hossain an entry visa. (The other two Commissioners did not require visas for their visit.)

8. Jewish settlements in the West Bank and Gaza feature prominently in this report. For this reason, the Commission approached the Council of Jewish Settlements of Judea, Samaria and Gaza (Yesha) in order to obtain their views at first hand. After consideration and consultation with the Government of Israel, the Council decided not to cooperate with the Commission.

9. The Commission made a concerted effort to obtain information and opinions about human rights violations and violations of international humanitarian law from both the Palestinian and the Israeli perspectives. The Commission regrets the refusal of the Government of Israel to cooperate with it. This meant that it could not obtain specific responses to allegations of human rights violations and violations of international humanitarian law or benefit from

interaction on the concerns of the Commission. The Commission believes, however, that it was adequately informed as to the official Israeli position through its study of the Israeli submissions to the Mitchell Commission and the Government's response to the report of the High Commissioner for Human Rights and by speaking to informed Israeli interlocutors. It also had the benefit of a discussion with former General Shlomo Gazit, the Chief Military Coordinator of West Bank and Gaza Policy in the period 1967-1974 and a keen student of military affairs and security doctrine.

II. METHODOLOGY

10. The Commission has studied numerous reports on matters affecting human rights and humanitarian law in the occupied Palestinian territories since the start of the second intifada on 28 September 2000. During its visit to Israel and the occupied territories, it heard a considerable amount of evidence on such matters. In addition, it experienced violence at first hand, spoke to victims and inspected destroyed properties and the sites of some of the worst confrontations between demonstrators and the IDF. The impressions and interpolations of the Commission and the testimony received by the Commission confirm the views expressed by the most respected and reliable NGOs in the region. The Commission has, therefore, relied to varying degrees on the findings of respected NGOs where they were supported by reliable eyewitness accounts and where they coincide with other evidence received by the Commission. In other words, the Commission is guided in its report by the best available evidence. Most of this evidence is not disputed by either the Palestinian Authority (PA) or the Government of Israel, although they tend to place an interpretation different from that of the Commission upon it.

11. In its report the Commission refers to facts and figures that show the magnitude of the violations of human rights and international humanitarian law in the OPT. These facts and figures have been taken from a wide variety of sources. Every attempt has been made to confirm their accuracy by reference to reports on the same incidents from other sources. Where there is any doubt about the accuracy of a particular factual situation, no statistics are given about it.

12. The present report will show that the IDF, assisted by settlers on occasion, has been responsible for most of the human rights violations and violations of international humanitarian law in the OPT. This is not to overlook the fact that human rights violations have been committed by Palestinians, either under the authority of the PA or by individual Palestinians acting seemingly without authority. Where necessary, the present report draws attention to these violations.

13. The mandate of the Commission is to report on violations of human rights and international humanitarian law in the OPT. Both the Government of Israel and the PA allege that the other party has violated the Oslo Accords in fundamental respects during the present intifada. The Commission makes no attempt to pronounce on these allegations, except where they impinge upon matters falling within its mandate.

14. In the course of its investigation, the Commission met leaders of civil society in both Israel and the OPT. We were impressed with their understanding and vision. Leaders of this kind offer the best prospect for the future of Palestine and the normalization of relations between Jews and Arabs.

15. The Commission hopes that its report will serve to advance the peace process. The attitude of the Commission is that, while there can be no human rights without peace, a durable peace is not likely to be attained if it is not founded on respect for human rights and the rule of law.

III. CLARIFYING THE CONTEXT: ILLUSION AND REALITY

16. It was evident in all phases of our inquiry into the patterns of violations of human rights and international humanitarian law during the second intifada that an appreciation of the behaviour of the parties involved depended on having an understanding of the surrounding context. Each side has felt justified in taking the action that has accompanied recent moves, although each side gives its own self-serving interpretation of its legal, moral and political character. It is important to comprehend these differences in the process of seeking an objective assessment of the various allegations of violative conduct. It is just as important to avoid equating adversary positions as equally persuasive. In the setting of the Israeli-Palestinian relationship it is of pervasive significance that the Palestinian people are struggling to realize their right of self-determination, which by virtue of international law and morality provides the foundation for the exercise of other rights. Of comparable significance is the appreciation of the extent to which Israel's continued occupation of Palestinian territories has remained the most formidable obstacle to Palestinian self-determination.

17. The Commission came away from this inquiry with two overriding assessments that are at once discouraging and illuminating.

18. The first involves perceptions, and focuses on the extent to which the two sides perceive the central reality of their respective positions from diametrically opposed constructions of the meaning of recent events. In essence, the Government of Israel and most Israelis conceive of the breakdown of the Oslo process as creating for them a severe and novel security crisis. Most Israelis view the second intifada as an indication that Palestinians are unwilling to resolve their conflict by peaceful means, having rejected what is regarded as a generous offer by the Government of Israel at the Camp David II and Taba stages of the Final Status negotiations. The nature of this crisis is such that, according to this dominant Israeli perspective, the encounter with the Palestinians has moved from a relationship between an occupying Power and an occupied people to one between conflicting parties in a state of belligerency or war, implying a virtual absence of legal and moral constraints, at least on the Israeli side, provided only that a self-serving argument of military necessity is set forth.

19. In the starkest possible contrast, the Palestinian Authority and most Palestinians perceive the current phase of their relationship with Israel as brought about by a combination of the distortions associated with the implementation of the Oslo principles, the failure to implement a series of authoritative United Nations resolutions, most particularly Security Council resolutions 242 (1968) and 338 (1973), and grave breaches by Israel of the Fourth Geneva Convention. These aspects of the situation are further seen as responsible for the full harshness of Israeli occupation as it affects adversely the daily lives of the Palestinians. Such circumstances are regarded as profoundly aggravated by the continued expansion of Israeli settlements throughout the period of the Oslo process and by the IDF role in their protection.

The combination of these elements is regarded by most Palestinians as the proximate cause of the escalating spiral of violence set off by the provocative events at Harem al-Sharif/Temple Mount on 28 September 2000. In this regard, the second intifada is viewed as a spontaneous series of moderate and proportional responses to an occupation that has been maintained and perpetuated in defiance of the authority of the United Nations since it was established in 1967. From this perspective, the Palestinians contend that they continue to seek a negotiated end to the conflict to attain a peaceful settlement that is fair to both sides and upholds the security of both peoples on the basis of mutuality.

20. Our second closely related conclusion is associated with the somewhat disguised link between the modality of Israeli occupation as a result of changes brought about by the Oslo process and the subsequent intifada, with its escalating spiral of violence. It is of critical importance to appreciate the interaction between the redeployment of the IDF since 1994 and the implementation of the Oslo Accords. In effect, the IDF withdrew by stages from most of the areas on the West Bank and Gaza inhabited by the bulk of the Palestinian population, and yet sustained, and even intensified, its control over the borders between the Palestinian territories and Israel and among the various districts internal to the OPT. Even more significantly, owing to the retention of the settlements situated throughout the Palestinian territories, as the accompanying map makes clear (annex IV), the West Bank and Gaza were divided into "A", "B", and "C" areas, with the Palestinian Authority exercising full administrative control over A, while Israel exercises security control over B and retains exclusive control over C. In effect, a series of internal boundaries were established by agreements implementing the Oslo Accords, so as to enable Israel to provide protection to the settlements while withdrawing from areas densely populated by Palestinians. The effect of such a redistricting of the Palestinian territories was to produce a situation of extreme fragmentation, making travel very burdensome for Palestinians who went, for work or otherwise, from one part of the territories to another: checkpoints were maintained where detailed searches were carried out that resulted in long waits and frequent humiliation, greatly burdening Palestinian rights of movement even under normal circumstances. In the course of the second intifada, this already difficult situation has been severely aggravated by frequent closures and blockades that have prevented the movement of goods and persons across both internal and external borders. Most Palestinians described the situation of recent months as living under "a state of siege".

21. Such a pattern of control and security can only be understood in relation to the settlements and their need for safe access to and from Israel. The main IDF function in the occupied Palestinian territories is to guard the settlements and the access and bypass roads. The relationship is such that the settlers are given unconditional priority whenever their presence impinges upon that of the Palestinian indigenous population. For instance, all Palestinian traffic is stopped while a single settler vehicle passes on an access road, causing long delays and much resentment. While travelling, particularly in Gaza, the Commission had its own direct experience of this situation. When a violent incident occurs, Israeli closures further inhibit travel, often preventing or greatly detaining even emergency traffic, such as ambulances. The Commission verified several accounts of deaths due to an inability of Palestinians to receive timely medical attention. Israel has invested heavily in an elaborate system of bypass roads in the West Bank designed to provide most settlements and the IDF with the means to travel to and from Israel, and between settlements, without passing through Palestinian-controlled areas. Palestinians view these roads with alarm, both because of their substantial and symbolic

encroachment upon the heart of a future Palestinian State and, more so, because the magnitude of the investment and effort involved in such a development seems to impart an Israeli view that most of the settlements on the West Bank will never be removed. This situation contrasts with Gaza, where access roads cut through Palestinian territory and have not been specially constructed. In this regard, the settlement structure in Gaza seems removable by negotiations on final status in a manner that at present does not appear likely in relation to the West Bank.

22. Part of the perceptual gap is associated with the effects and nature of the violence. Israelis appear to connect most of their casualties with the stone-throwing demonstrations, interspersed at times with Palestinian gunfire. The Palestinians associate casualties on their side mainly with what they view as Israeli/IDF overreaction to these demonstrations. It was the clear judgement of the Commission that Palestinian casualties were indeed mainly associated with these direct encounters, but that, to the best of our knowledge, the IDF, operating behind fortifications with superior weaponry, endured not a single serious casualty as a result of Palestinian demonstrations and, further, their soldiers seemed to be in no life-threatening danger during the course of these events. It was the definite view of the Commission that the majority of Israeli casualties resulted from incidents on settlement roads and at relatively isolated checkpoints at the interface between A, B, and C areas, that is, as a consequence of the settlements, and irritations resulting indirectly therefrom. In this regard, account must be taken of settler violence against Palestinian civilians in areas adjoining settlements, and of IDF complicity in such violence. A pervasive feature of the tensions associated with the second intifada is the clear affinity between the IDF and Jewish settlement communities, and the equally evident hostility between these communities and the surrounding Palestinian population.

23. The language associated with the second intifada is also relevant to an assessment of human rights violations and violations of international humanitarian law. Both sides tend to view the violence of the other side as comprising "terrorism". The Israelis view attacks by Palestinians, especially beyond "the Green Line" (pre-1967 Israel), as terrorism even if directed against official targets such as IDF soldiers or government officials. Palestinians regard the IDF tactics involving shooting unarmed civilian demonstrators (especially children) or relying on tanks and helicopters against demonstrators, in retaliation for shots fired from refugee camps, and assassinations of targeted individuals as State terrorism. The legal status of these patterns of violence is difficult to establish authoritatively. Part of the current complexity relates to the Israeli contention that a condition of armed conflict has replaced that of belligerent occupancy as a result of IDF withdrawals from A zones, and the transfer of governing authority in those areas to the PA. Another part of the complexity arises from the Palestinians' contention that they enjoy a right of resistance to an illegal occupation.

24. There is another fundamental discrepancy of perception. Israel believes that its security measures, including border and road closures, represent reasonable, even restrained, measures of response to Palestinian unrest and opposition. To the extent that Israel relies on the superiority of its weaponry or inflicts most of the casualties, such behaviour is rationalized as necessary to demoralize a numerically superior enemy, nipping its resistance in the bud. Such lines of explanation were set forth by Israeli witnesses to explain and justify even the use of live ammunition by the IDF against unarmed Palestinian demonstrators during the opening days of the second intifada. During these crucial days there was no evidence of Palestinian gunfire.

25. The Palestinians view this link between Palestinian acts of resistance and Israeli responses from an entirely different angle of interpretation. To Palestinians, the Israeli use of force from day one of the second intifada, and indeed before Ariel Sharon's visit on 28 September to the Al Aqsa mosque, was intended to crush any Palestinian impulse to oppose openly the continued Israeli domination and occupation of the West Bank and Gaza. For most Palestinians, the closures of roads and borders, destruction of homes and property, and accompanying measures of curfews and restrictions are regarded as clear expressions of an Israeli policy of inflicting collective punishment upon all Palestinian inhabitants. Palestinians also rejected the view that the Palestinian Authority, and its police, had the capacity to prevent hostile demonstrations or to ensure the absence of violent incidents involving targets within Israel. When Israel responded to such events by punishing the territories as a whole it was viewed by Palestinians as vindictive, unjust and illegal because such a response lacked any discernible connection to either the perpetrator or to prospects for deterrence of future violence.

26. Closely related to such perceptions are differences of viewpoint as to the nature of the second intifada. Israelis tended to contrast the first with second intifadas. The first intifada was seen in retrospect by Israelis as having been a largely spontaneous, bottom-up and non-violent expression of opposition to Israeli occupation. It was, in such circumstances, not reasonable to hold the Palestinian leadership responsible for the disorder. According to Israelis, the second intifada was instigated from above so as to mount a timely challenge to the Israeli leadership at a delicate moment in the peace negotiations. It was a calculated plan to improve upon an exceedingly weak Palestinian bargaining position and it also represented a serious failure by the Palestinian Authority to carry out its obligations under the Interim Agreements flowing from Oslo to maintain security for Israel in areas subject to its authority.

27. The Palestinians see the second intifada from an entirely different perspective, essentially from the outlook of an occupied people. They regard the demonstrations as spontaneous eruptions of pent-up hostile sentiment arising from years of frustration, disappointment and humiliation. Palestinians interpret the Israeli responses as consistent with the basic structure of the occupation of their territories, as one-sided, lacking in empathy for the Palestinian civilian population, and designed to punish and crush any signs of resistance.

28. From this perspective, the Palestinians see the greater reliance by Israel on heavy weapons and deadly fire in the second intifada, as compared to the first, as seeking to discourage Palestinians from either raising the level of their resistance or resisting altogether. This reliance on the tactics of war is also perceived as providing Israel with a pretext for avoiding the restraints associated with the exercise of police responsibilities or relating to the application of standards of human rights.

29. In addition to these basic structural issues, it is of great importance to appreciate the added vulnerability of Palestinian refugees who comprise about 50 per cent of the population in the Palestinian territories and whose number is increasing at a rate of more than 3 per cent per annum. While the Israelis tend to perceive Palestinians resident in the territories as a single reality, without according any special attention to the refugees, the Palestinians are far more conscious of the acute suffering that Israeli security measures have brought to the refugee communities during this second intifada.

30. These refugees have been particularly victimized during the second intifada, often being trapped within their crowded confines by closure and curfew measures, which has made it impossible for many refugees to keep their jobs. Unemployment is high, savings almost non-existent, with great suffering resulting. Also, for historical reasons, the Palestinian refugees, alone among refugee communities in the world, fall outside the protective regime of the Office of the United Nations High Commissioner for Refugees (UNHCR). UNRWA provides relief and humanitarian aid, but is not constitutionally or politically empowered to provide needed protection, a conclusion supported for us by discussions with leading United Nations officials and NGO experts.

31. A further fundamental question of human rights relates to the extreme differences between the parties on matters pertaining to the core dispute, the wider refugee issue and its relationship to a successful peace process. The Israeli consensus regards the assertion of any serious demand to implement a Palestinian right of return in relation to Palestinians expelled from 530 villages in 1948 as a decisive complication in the search for "peace". The Palestinian approach is more varied and tentative. Some Palestinians do insist that the right of return be fully implemented in accordance with international law, which accords priority to repatriation to the extent desired. More frequently, Palestinians seem more flexible on this matter, seeking mainly a symbolic acknowledgement by Israel of the hardships associated with the expulsions, some provision for compensation and some possibilities for Palestinian family unification. This Palestinian view suggests that if there is Israeli good will on other outstanding issues, such as Jerusalem and the settlements, then controversy over the right of return can be addressed in a manner that takes account of practical realities that have developed in the course of the more than 50 years since the critical events.

32. Overall, the Government of Israel and Israeli public opinion tend to regard all Israeli uses of force as reasonable measures of security, given the altered connection between the two societies as a result of the IDF redeployment associated with the Oslo process. Such security measures need to be stringent and intrusive so as to afford protection to the settlements, and to settler movement to and from Israel. Israeli security is a catch-all justification for all policies directed coercively at the people of Palestine. Such a major premise enables the Israeli outlook to view any Palestinian recourse to force as tantamount to "terrorism". The perceptual gap is greatest on this issue of violence and its interpretation, as Palestinians view their acts of opposition as reasonable responses to an illegal occupation of their homeland, treating their violence as produced by consistent Israeli overreaction to non-violent resistance. Additionally, Palestinians universally reject Israel's wider security rationale and view restrictions on movement, closures, property destruction, political assassinations, sniper shootings and the like as punitive and vindictive practices inconsistent with their fundamental human rights, as well as with the minimum restraints embodied in international humanitarian law.

33. There is one comprehensive observation bearing on the perception of United Nations authority by the two sides. Israelis tend to view the United Nations and most of the international community as completely unsympathetic to their quest for security, as well as biased in favour of Palestinian claims and grievances. On their side, the Palestinians feel disillusioned about the effectiveness of United Nations support and abandoned in their hour of need for elemental

protection. Palestinians refer to the myriad United Nations resolutions supporting their cause, but never implemented. In this sense, both sides are currently suspicious about the role of the United Nations, its outlook, capacity and commitment.

34. Three conclusions follow from this consideration of Israeli-Palestinian perceptual gaps:

(a) The importance of encouraging better contact between persons of good will on both sides so that communication between the parties is more open and takes greater account of the views of the other side. This observation applies particularly to journalists, currently by and large confined within their respective societies, who tend to provide readers with partisan accounts of the interaction of Israelis and Palestinians that are uncritical of their respective official positions and to employ language that reinforces "enemy" stereotypes of "the other";

(b) The challenge to the organs of the United Nations to rehabilitate their reputation in relation to both Israel and the Palestinian Authority, and the two populations, by seeking to achieve objectivity in apportioning legal and political responsibility, in calling for certain conduct in the name of international law, and in fashioning proposals for peace and reconciliation. As important, or more so, is the need to take steps to ensure that United Nations directives, whether in the form of resolutions or otherwise, are implemented to the extent possible, and that non-compliance is addressed by follow-up action;

(c) An appreciation that a commitment to objectivity does not imply a posture of "neutrality" with respect to addressing the merits of controversies concerning alleged violations of human rights and international humanitarian law. Judgements can and must be made. It is useful to recall in this connection the statement of the Israeli Minister for Foreign Affairs, Shlomo Ben-Ami, on 28 November 2000 in the course of a Cabinet discussion, opposing the release of supposed Palestinian transgressors during the early stages of the second intifada: "Accusations made by a well-established society about how a people it is oppressing is breaking the rules to attain its rights do not have much credence" (article by Akiva Elder in Ha'aretz, 28 November 2000). Such a perspective underlies the entire undertaking of our report. We have attempted to the extent possible to reflect the facts and law fairly and accurately in relation to both sides, but we have evaluated the relative weight of facts and contending arguments about their legal significance. This process alone enables us to draw firm conclusions about the existence of violations of international legal standards of human rights and of international humanitarian law.

IV. THE LEGAL STATUS OF THE CONFLICT

35. The legal status of the West Bank and Gaza and the legal regime governing relations between Israel and the people of Palestine have been in dispute ever since Israel first occupied the West Bank and Gaza in 1967. As the sovereignty of Jordan over the West Bank was questionable and Egypt never asserted sovereignty over Gaza, the Government of Israel took the view that there was no sovereign Power at whose expense it occupied these territories. Consequently, although Israel is a party to the Fourth Geneva Convention of 1949, it maintained that it was not bound in law to treat the territories as occupied territories within the meaning of

the Fourth Geneva Convention. Despite this, Israel agreed to apply certain of the humanitarian provisions contained in the Fourth Geneva Convention to the occupied territories on a *de facto* basis.

36. The peace agreements between Israel and the Palestinian Authority, hereafter referred to as the Oslo Accords, have superimposed an additional level of complexity on an already disputed legal situation. It is now argued by Israel that, despite the prohibitions contained in article 47 of the Fourth Geneva Convention on interfering with the rights of protected persons in an occupied territory by agreement between the authorities of the occupied territory and the occupying Power, the Oslo Accords have substantially altered the situation. In particular, it is argued by Israel that it can no longer be viewed as an occupying Power in respect of the "A" areas, accommodating the majority of the Palestinian population, because effective control in these areas has been handed over to the Palestinian Authority.

37. The status of the West Bank and Gaza raises serious questions, not only for the above reasons, but also because of the impact of human rights and self-determination on the territory. A prolonged occupation, lasting for more than 30 years, was not envisaged by the drafters of the Fourth Geneva Convention (see art. 6). Commentators have therefore suggested that in the case of the prolonged occupation, the occupying Power is subject to the restraints imposed by international human rights law, as well as the rules of international humanitarian law. The right to self-determination, which features prominently in both customary international law and international human rights instruments, is of particular importance in any assessment of the status of the West Bank and Gaza. The right of the Palestinian people to self-determination has repeatedly been recognized by the General Assembly of the United Nations and there can be little doubt that the ultimate goal of the Oslo peace process is to establish an independent Palestinian State. Indeed over 100 States already have relations with the Palestinian entity, not unlike relations with an independent State, while the Palestinian Authority has observer status in many international organizations. The Palestinian question is, therefore, seen by many as a colonial issue and the recognition of Palestinian statehood as the last step in the decolonization process initiated by the General Assembly in its resolution 1514 (XV).

38. Uncertainty about the status of Palestine in international law has complicated the conflict between Israel and the Palestinian people since 29 September 2000. The Government of Israel argues that it can no longer be seen as an occupying Power in respect of the A areas because it has ceded control over these territories to the Palestinian Authority. Moreover, it argues that, unlike the first intifada, in which the weapons of the Palestinian uprising were mainly stones, the weapons of the new intifada include guns and heavier weaponry, with the result that there is now an armed conflict between Israel and the Palestinian people led by the Palestinian Authority. This argument seeks to justify the use of force resorted to by the IDF in the present conflict. In essence, Israel argues that it cannot be seen as an occupying police power required to act in accordance with police law enforcement codes, but that it is engaged in an armed conflict in which it is entitled to use military means, including the use of lethal weapons, to suppress political demonstrations, to kill Palestinian leaders and to destroy homes and property in the interest of military necessity.

39. Clearly, there is no international armed conflict in the region, as Palestine, despite widespread recognition, still falls short of the accepted criteria of statehood. The question then

arises as to whether there is a non-international armed conflict, defined by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in the Tadic case, as "protracted armed violence between governmental authorities and organized armed groups". The Israeli argument that the threshold for an armed conflict has been met is based on the fact that there have been some 3,000 incidents allegedly involving exchanges of gunfire and that Palestinian violence is organized and orchestrated by the Palestinian Authority. A contrary view advanced by the Palestinians is that the present intifada is to be categorized as an uprising of large elements of a civilian population against an occupying Power's unlawful abuses of its control over that population and its environment; that the uprising has been instigated by loosely organized elements of the population opposed to Israeli occupation of Palestine and the failure of the Palestinian Authority to improve the lot of the Palestinian people; and that there are no properly organized armed groups, let alone armed groups coordinated or organized by the Palestinian Authority.

40. It is difficult for the Commission to make a final judgement on this matter. However, it inclines to the view that sporadic demonstrations/confrontations often provoked by the killing of demonstrators and not resulting in loss of life on the part of Israeli soldiers, undisciplined lynchings (as in the tragic killing of Israeli reservists on 12 October 2000 in Ramallah), acts of terrorism in Israel itself and the shooting of soldiers and settlers on roads leading to settlements by largely unorganized gunmen cannot amount to protracted armed violence on the part of an organized armed group. This assessment is confirmed by the peace that prevails in those areas of the West Bank and Gaza visited by the Commission. The Commission realizes that this assessment, based on a brief visit to the region and the views of witnesses and NGOs generally unsympathetic to the IDF, may not be fully accurate. However, there is enough doubt in the minds of the members of the Commission as to the prevailing situation to place in question the assessment of the situation as an armed conflict by the IDF justifying its resort to military rather than police measures.

41. In the opinion of the Commission, the conflict remains subject to the rules of the Fourth Geneva Convention. It does not accept the Israeli argument that the Fourth Geneva Convention is inapplicable by reason of the absence of a residual sovereign Power in the OPT. This argument, premised on a strained interpretation of article 2 of the Convention, fails to take account of the fact that the law of occupation is concerned with the interests of the population of an occupied territory rather than those of a displaced sovereign. The argument that Israel is no longer an occupying Power because it lacks effective control over A areas of the OPT carries more weight, but is likewise untenable. The test for the application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nürnberg in In re List and others (The Hostages Case) in 1948. The Oslo Accords leave Israel with the ultimate legal control over the OPT and the fact that for political reasons it has chosen not to exercise this control, when it undoubtedly has the military capacity to do so, cannot relieve Israel of its responsibilities as an occupying Power.

42. While an occupying Power or party to a conflict may be given a margin of interpretation in its assessment of the nature of the conflict, it cannot be allowed unilaterally to categorize a situation in such a way that the restraints of international humanitarian law and human rights law are abandoned. For this reason, the Commission suggests that the High Contracting Parties to

the Geneva Convention should seriously address the nature of the conflict and Israel's obligations as a party to the Fourth Geneva Convention. The Commission is mindful of the Israeli objection to the "politicization" of the Geneva Conventions, but it sees no alternative to the exercise of the supervisory powers of the High Contracting Parties under article 1 of the Fourth Geneva Convention. Israel's objection that article 1 does not oblige a High Contracting Party to "ensure" respect for the Convention on the part of other States parties runs counter to the views of the ICRC and to the general obligation on the part of States to ensure respect for humanitarian law.

43. Even if the conflict is categorized as an armed conflict, entitling the IDF to greater latitude in the exercise of its powers, the IDF is certainly not freed from all restraints under international humanitarian law and human rights law. It is still obliged to observe the principle of distinction requiring that civilians may not be made the object of attack, "unless and for such time as they take a direct part in hostilities" (a principle reaffirmed in article 51 (3) of Additional Protocol I to the Geneva Conventions). Stone throwing by youths at heavily protected military posts hardly seems to involve participation in hostilities. Moreover, there is considerable evidence of indiscriminate firing at civilians in the proximity of demonstrations and elsewhere. In addition, the IDF is subject to the principle of proportionality which requires that injury to non-combatants or damage to civilian objects may not be disproportionate to the military advantages derived from an operation. The use of lethal weapons against demonstrators and the widespread destruction of homes and property along settlement roads cannot, in the opinion of the Commission, be seen as proportionate in the circumstances. Human rights norms also provide a yardstick for measuring conduct in the OPT, as there is general agreement that such norms are to be applied in the case of prolonged occupation. The 1979 Code of Conduct for Law Enforcement Officials and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials reflect the human rights norms applicable in the case of law enforcement and crowd control. It is against this background that allegations of human rights violations and violations of international humanitarian law will be considered in the following section.

V. EXCESSIVE USE OF FORCE

44. Casualties have been high in the present intifada. According to conservative estimates, as at 21 February 2001, 311 Palestinians (civilians and security forces) have been killed by Israeli security forces and civilians in the OPT; 47 Israelis (civilians and security forces) have been killed by Palestinian civilians and security forces; 11,575 Palestinians and 466 Israelis have been injured; 84 Palestinian children under the age of 17 years have been killed and some 5,000 injured; 1 Israeli child has been killed and 15 injured; 271 Palestinian civilians and 40 members of the security forces have been killed; while 27 Israeli civilians and 20 members of the security forces have been killed.

45. Most of the Palestinian deaths and injuries have been caused by live ammunition (deaths: 93 per cent; injuries: 20 per cent), rubber-coated bullets (deaths: 1 per cent; injuries: 37 per cent), and tear gas (deaths: 1 per cent; injuries: 32 per cent). Most of these deaths and injuries have occurred in confrontations/demonstrations held on the perimeters of A areas, roads to settlements or junctions on the road to settlements. There is no evidence that members of the IDF responsible for such killings or the infliction of such injuries were killed or seriously injured. On the contrary, the evidence suggests that members of the IDF, behind concrete

bunkers, were in most cases not exposed to life-threatening attacks by stone - or Molotov-cocktail throwers, or even by sporadic gunfire from gunmen in or around the demonstrations. This assessment is vigorously disputed by the IDF, which maintains that rubber-coated bullets and live ammunition have only been used in life-threatening situations.¹ However, statistics, reflected in the number of Palestinian deaths at demonstrations and the absence of IDF deaths or serious injuries at such confrontations, the evidence of eyewitnesses who testified before the Commission and the reports of NGOs and international bodies place the IDF assessment in serious question. It is difficult to resist the conclusion that most of these demonstrations could have been dealt with by methods normally used to suppress violent demonstrations, such as water cannons, tear gas and soft rubber bullets (of the kind used in Northern Ireland). Also, it is unclear why the IDF has not used riot shields to protect itself against stone-throwers. By and large the evidence suggests that the IDF is either not trained or equipped to deal adequately with violent demonstrations (despite its long experience in coping with such demonstrations) or that it has deliberately chosen not to employ such methods. For this reason the Commission shares the view expressed by many NGOs that the IDF is to be censured for failing to comply with the methods for law enforcement laid down in the law enforcement codes of 1979 and 1990 referred to above. The Commission likewise shares the concerns of NGOs about the failure of the IDF to comply with its own open-fire regulations relating to the use of live ammunition in situations of this kind.

46. Even if the above assessment is incorrect and the confrontations in question were manifestations of an armed conflict between the IDF and an organized Palestinian force, the Commission is of the view that the response of the IDF fails to meet the requirement of proportionality and shows a serious disregard for civilians in the proximity of the demonstrations.

47. The Commission received disturbing evidence about both the rubber-coated bullets and the live ammunition employed by the IDF. The former are, apparently, designed to target particular individuals and not to disperse crowds. Moreover, it is misleading to refer to them as "rubber bullets" as they are metal bullets with a thin rubber coating. The live ammunition employed includes high-velocity bullets which splinter on impact and cause the maximum harm. Equally disturbing is the evidence that many of the deaths and injuries inflicted were the result of head wounds and wounds to the upper body, which suggests an intention to cause serious bodily injury rather than to restrain demonstrations/confrontations.

48. International law obliges the military to be particularly careful in its treatment of children. Of the Palestinians killed, 27 per cent have been children below the age of 18 years and approximately 50 per cent of those injured have been below the age of 18 years. These children have been armed with stones or, in some cases, Molotov cocktails. The Israeli position is that the participation of children in demonstrations against the IDF has been organized, encouraged and orchestrated by the Palestinian Authority after thorough indoctrination against Israelis. While the Commission is prepared to accept that some children are likely to have been exposed to anti-Israeli propaganda in school or special training camps, it cannot disregard the fact that demonstrations are substantially the result of the humiliation and frustration felt by children and their families from years of occupation. The Commission heard evidence from parents and NGOs about the unsuccessful attempts of many parents to prevent their children participating in demonstrations and the grief caused them by the death and suffering of their

children. In this respect, Palestinian parents are no different from Israeli parents. It is likely that the Palestinian Authority could have done more to restrain children from participation in stone-throwing demonstrations. The evidence suggests that, on occasion, the Palestinian police made attempts to prevent demonstrations, but these attempts were often unsuccessful. This can be ascribed to the incompetence of the Palestinian police, the fact that the Palestinian police were themselves targeted by stone-throwers when they attempted to curtail demonstrations, and an understandable identification of the Palestinian police with the goals and spirit of the demonstrators. History is replete with instances of cases in which young people, prompted by idealism, despair, humiliation and the desire for excitement, have participated in demonstrations that have confronted an oppressive regime. In recent times children have behaved in a similar way in Northern Ireland, South Africa, Indonesia and elsewhere. The insistence of the IDF that the Palestinian demonstrators, humiliated by years of military occupation which has become part of their culture and upbringing, have been organized and orchestrated by the Palestinian Authority either shows an ignorance of history or cynical disregard for the overwhelming weight of the evidence.

49. The excessive use of force on the part of the IDF and the failure to comply with international humanitarian law is further demonstrated by the failure of the IDF to respect the vehicles of the Red Crescent and other medical vehicles. Statistics show that vehicles of the Red Crescent have been attacked on 101 occasions. The IDF has also prevented ambulances and private vehicles from travelling to hospitals. In this respect, it should be stressed that the Palestinians have likewise shown a lack of respect for medical vehicles and there have been 57 incidents in which Palestinians have attacked personnel and vehicles of the Magen David Adom.

50. In the present intifada, the IDF apparently on grounds of military necessity, has destroyed homes and laid to waste a significant amount of agricultural land, especially in Gaza, which is already land starved. Statistics show that 94 homes have been demolished and 7,024 dunums of agricultural land bulldozed in Gaza. Damage to private houses is put at US\$ 9.5 million and damage to agricultural land at about US\$ 27 million. Most of this action has occurred on roads leading to settlements, ostensibly in the interest of the protection of settlement vehicles. The Commission inspected some of the devastation caused by the IDF along settlement roads. On the Kusufim road, in the Qarara district, it inspected land that had been bulldozed for a distance of some 700 metres from the road. Houses situated on this land had been destroyed and families compelled to live in tents. Water wells in the vicinity had also been completely destroyed. The Commission found it difficult to believe that such destruction, generally carried out in the middle of the night and without advance warning, was justified on grounds of military necessity. To the Commission it seemed that such destruction of property had been carried out in an intimidatory manner unrelated to security, disrespectful of civilian well-being and going well beyond the needs of military necessity. The evidence suggests that destruction of property and demolition of houses have been replicated elsewhere in the West Bank and Gaza. Palestinians, like other people, are deeply attached to their homes and agricultural land. The demolition of homes and the destruction of olive and citrus trees, nurtured by farmers over many years, has caused untold human suffering to persons unconnected with the present violence. Even if a low-intensity armed conflict exists in the West Bank and Gaza, it seems evident to us that such measures are disproportionate, in the sense that the damage to civilian property outweighs military gain.

Here it should be stressed that the Fourth Geneva Convention prohibits the destruction of private property by the occupying Power "except where such destruction is rendered absolutely necessary by military operations" (art. 53).

51. The Commission concludes that the IDF has engaged in the excessive use of force at the expense of life and property in Palestine. At the same time the Commission wishes to express its horror at the lynchings of Israeli military reservists in Ramallah on 12 October 2000, the killing of Israelis at a bus stop in Tel Aviv by a Palestinian bus driver on 14 February 2001 and similar incidents that have done much to inflame Israeli public opinion against the Palestinian uprising.

52. There is no evidence that the IDF has taken serious steps to investigate the killing or wounding of Palestinians, except in a handful of cases, even where the circumstances strongly suggest that soldiers had behaved in an undisciplined or illegal manner. The excuse that no investigations are required on account of the characterization of the conflict as armed conflict is not convincing and shows a disregard for the provision of the Fourth Geneva Convention which requires the occupying Power to prosecute those guilty of committing grave breaches and other infractions of the Convention (art. 146). Equally unconvincing are the reasons given by the Palestinian Authority for its failure to investigate and prosecute the killings of Israelis, particularly those responsible for the Ramallah lynchings.

VI. EXTRAJUDICIAL EXECUTIONS/POLITICAL ASSASSINATIONS

53. Extrajudicial executions or targeted political assassinations carried out by the IDF have resulted in only a small number of deaths and cannot compare in magnitude with the more widespread suffering caused to the Palestinian population. The Commission has, however, decided to pay special attention to these killings, because they have been officially acknowledged, promoted and condoned.

54. Israel has long been accused of being responsible for the assassination of targeted Palestinian individuals, but it is only during the second intifada that such a practice has been officially acknowledged and defended at the highest levels of the Government of Israel. In early January 2001, the Israeli Deputy Minister of Defence, Ephraim Sneh, justified the policy in the following language: "I can tell you unequivocally what the policy is. If anyone has committed or is planning to carry out terrorist attacks, he has to be hit ... It is effective, precise and just." At a meeting of the Foreign Affairs and Defence Committee, Prime Minister Ehud Barak put the claim more broadly: "If people are shooting at us and killing us, our only choice is to strike back. A country under terrorist threat must fight back." And more directly, while visiting a military command on the West Bank, Mr. Barak was quoted as saying, "The IDF is free to take action against those who seek to harm us".

55. There is further official confirmation of the Israeli claim of right with respect to extrajudicial killings. When the IDF West Bank military commander, Brigadier-General Beni Gantz, was asked whether Israel was pursuing a "liquidation" policy with respect to the Palestinians, he responded as follows: "You said liquidation, not me. We will initiate action as necessary. We will not stop such action as long as there is a threat." Israel's Chief of Staff, Shaul Mofaz, invoked the legal opinion issued by the Military Advocate-General, Menachem Finkelstein, that it was permissible in exceptional cases to kill Palestinian terrorists,

expressed in the following guarded language: "This is not routine, but an exceptional method whose goal is to save human lives in the absence of any other alternative ... It is used against people [who have] definitely [been] identified as having worked, and are working, to commit attacks against Israel." It should be noted that the Military Advocate-General uses more circumscribed language than do the political and military leaders, but his guidelines are self-applied, depending upon the accuracy of Israeli intelligence and upon good faith in limiting such tactics to circumstances of an exceptional character.

56. One prominent instance of a political assassination involved the sniper shooting of Dr. Thabat Ahmad Thabat in Tulkarem, West Bank, as he was driving his car from his house in the morning of 9 December 2000. Dr. Thabat, a dentist, 50 years of age, father of three, held official positions in the Palestinian Health Ministry and was a lecturer on public health at Al Quds Open University. He was the Fatah secretary in Tulkarem and was in regular contact with Israeli NGOs working in the area of health and human rights. Several Israeli witnesses appearing before the Commission expressed dismay about the killing of Dr. Thabat, describing him as their "friend" and "partner" in the search for peace. Such expressions do not preclude the possibility that Dr. Thabat may have had a double identity, but Israel has produced no evidence of his complicity in violence against Israeli targets, beyond the vague allegation of his involvement in "terrorist activities". Press reports indicated that Israeli Special Forces undertook this action against Dr. Thabat as part of a military operation that consisted of "cleansing" Fatah security capacities in view of the demonstrations inside the Palestinian territories, and specifically at Tulkarem. Ms. Siham Thabat, the widow of Dr. Thabat, submitted a petition to the Supreme Court of Israel asking for an end to Israel's "cleansing policy", described as imposing "capital punishment without trial". The petition was dismissed. As far as is known, the prosecution submitted no further evidence specifically implicating Dr. Thabat.

57. While the Commission was present in the Palestinian territories, another prominent instance of extrajudicial killing occurred. It involved the use of a Cobra helicopter gunship to attack Massoud Iyyad with three rockets on 14 February 2001 while he was driving his car in Gaza near the Jabalya refugee camp. Mr. Iyyad was a lieutenant colonel and high-ranking member of Force 17, an elite security unit specifically assigned the task of protecting Yasser Arafat. Israeli security forces claimed credit for the assassination, contending that Mr. Iyyad was a leader of a Hezbollah cell in Gaza that was intending to transform the second intifada into a Lebanon-style war of attrition of the sort successfully waged by Hezbollah in the 1990s. Aside from the legality of such tactics, the allegations were never substantiated by the release of documentary or other evidence.

58. Such extrajudicial executions during the second intifada number at least 11, but the figure is probably much higher. Palestinian and independent sources put the figure at somewhere between 25 and 35. On at least one occasion, the killing of Hussein Ábayat on 9 November 2000 by anti-tank missiles fired at his car from helicopters, two women bystanders were also killed and three other Palestinians were seriously injured.

59. In a disturbing escalation of language associated with such violence, a designated spokesperson of the settler movement, Yehoshua Mor-Yosef, has been quoted as saying "Arafat is an enemy, he was never a partner. After seven years of war and him sending his own people to kill, we need to assassinate him". (*International Herald Tribune*, 27 February 2001, p. 8).

60. There have been several important political condemnations of extrajudicial killings. The Government of the United States has expressed a critical attitude towards extrajudicial killing in a detailed exposition of the practice contained in the "Occupied Territories" section of the Country Reports on Human Rights Practices-2000 issued by the Department of State. On behalf of the European Union, its Presidency issued a declaration on extrajudicial killings, calling them "unacceptable and contrary to the rule of law", and urging Israel "to cease this practice and thus respect international law". (Brussels, 13 February 2001, 5928/01 (Presse 47)). This declaration was formally submitted by the Council of the European Union to the Secretary-General of the United Nations with a request that it be circulated as a document of the General Assembly.

61. It is the view of the Commission that, whatever the truth of various allegations directed against specific individuals, the practice of political assassination is a fundamental violation of international human rights standards, as well as a grave breach of the Fourth Geneva Convention. Several human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, affirm the right to life and specifically prohibit executions of civilians without trial and a fair judicial process.

62. Because the law of occupation also applies, provisions of this *lex specialis* take precedence over human rights. (For clarification of this conclusion, see the discussion on the legal status of the conflict in section IV above.) Thus, whether a particular loss of life is to be considered an arbitrary loss of life contrary to article 6 of the International Covenant on Civil and Political Rights can only be decided by reference to the law of occupation in the Fourth Geneva Convention. Article 4 of the Fourth Geneva Convention defines persons protected by the Convention as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals". The phrase "in the hands of" simply means that the person is on territory that is under the control of the State in question and implies control that is more than mere physical control. Civilians lose the protection under the Fourth Geneva Convention when they become combatants by taking a direct part in hostilities (art. 51 (3) of Additional Protocol I). Israel contends that the victims of targeted political assassinations were combatants. This is unconvincing for two related reasons: they were not participating in the hostilities at the time they were killed; and no evidence was provided by Israel to back up its contention of a combat role despite their civilian appearance.

63. There is no legal foundation for killing protected persons on the basis of suspicion or even on the basis of evidence of their supposedly menacing activities or possible future undertakings. On the contrary, article 27 of the Fourth Geneva Convention provides for the respect of protected persons, article 32 explicitly prohibits their killing under such conditions, and article 68 places restrictions on the application of the death penalty and, in any event, requires a prior judicial trial.

64. As the evidence indicates, Dr. Thabat and several others who were targets of political assassinations could have been arrested when, as was the case in this instance, he made almost daily trips to points under Israeli security control. The Commission concludes that the practice of targeted political assassination, which is fully acknowledged by the Government of Israel at its highest levels, violates a number of provisions of the Fourth Geneva Convention. It also

represents a grave breach of the Convention, which in article 147 refers to "wilful killing" in this connection. Further, article 146 calls upon High Contracting Parties to enforce this prohibition in relation to those responsible for its violation.

VII. SETTLEMENTS

65. Jewish settlements in the West Bank (including East Jerusalem) and Gaza feature prominently in the present conflict between Israel and the Palestinian people. This report focuses on the implications of the settlements for human rights and international humanitarian law during the second intifada.

66. Israel argues that the issue of Jewish settlements is a political one to be resolved in negotiations between Israel and the Palestinians over the political future of the OPT. Palestinians, on the other hand, see the settlement issue as a major impediment to the peace process and a question governed by international law. They argue that settlements are unlawful as they violate article 49 (6) of the Fourth Geneva Convention, which prohibits an occupying Power from transferring parts of its own civilian population into the territory it occupies. The international community has given its overwhelming support to the Palestinian position. Repeated resolutions of both the Security Council and the General Assembly condemn Jewish settlements in the West Bank and Gaza as a violation of the Fourth Geneva Convention. The same attitude is adopted by the International Committee of the Red Cross.

67. The Commission is itself of the opinion that Jewish settlements in the West Bank and Gaza violate article 49 (6) of the Fourth Geneva Convention and place a serious obstacle in the way of durable peace.

68. Since 1967, Israel has been responsible for establishing, financing and protecting Jewish settlements in the West Bank and Gaza. Initially this programme of creeping annexation pursued by means of the requisitioning and occupation of Palestinian land was justified by Israel on security grounds. This pretext has long been abandoned. Indeed, Yitshak Rabin, while he was Prime Minister and Minister of Defence, acknowledged that most of the settlements added nothing to security and in fact were a burden on the army. Most settlements are today inhabited by civilian settlers motivated either by the ideology of Zionist expansion or by the comforts of a suburban way of life, subsidized by the Government of Israel. From the perspective of the Government, settlements create factual situations on the ground that serve to establish political control over the occupied Palestinian territories.

69. Today there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 380,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements have expanded considerably since the start of the Oslo peace process and accelerated under the Prime Ministership of Mr. Barak. Settlements have continued to expand since the start of the second intifada. The map in annex III gives an indication of the extent to which settlements are scattered throughout the territories, and the population of the different settlements. Settlements differ considerably in size and location. Some number over 10,000 inhabitants, while others have less than 100 inhabitants. Some are situated at a considerable distance from Palestinian towns, whereas others are situated within a Palestinian city, as, most prominently, in the case of the Jewish settlement in Hebron, or on the doorstep of a

Palestinian village or refugee camp. The settlement of Neve Dekalim, for instance, is situated adjacent to the crowded refugee camp of Khan Yunis. It was here that the Commission came under gunfire from the IDF.

70. In Gaza, settlement roads run through Palestinian territory and cross roads used by Palestinians, causing great traffic congestion for Palestinians whose vehicles are required to halt every time a settler or military vehicle approaches a crossroad. In the West Bank, on the other hand, Israel has built a vast road system, running for some 400 km, which bypasses Palestinian population centres and enables settlers and military forces protecting them to move speedily and safely through the West Bank. To achieve this, 160,000 dunums of land were requisitioned, much of it under cultivation by Palestinian farmers. Moreover, in some instances, Palestinian homes were demolished without compensation for the purpose of constructing this network of bypass roads. These roads prevent the expansion of Palestinian villages and undermine the economic development of Palestinians by restricting Palestinian movement and impeding the flow of commerce and workers from one Palestinian area to another. The scale of the investment in this road network raises troubling questions about Israel's long-term intentions for the West Bank.

71. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against the Palestinians and destroyed Palestinian agricultural land and property. Israeli justice has often either turned a blind eye to such acts or treated them with leniency bordering on exoneration. Inevitably, this has fuelled the resentment of Palestinians, who regard Israeli justice as biased in favour of settlers. Since the beginning of the intifada on 29 September 2000, incidents of settler violence have dramatically increased. Palestinian hostility to settlers has grown alarmingly since the start of this intifada and most of the Israelis killed in the present conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements.

72. Settlements are a major obstacle in the way of peace between Israelis and Palestinians. First, they virtually foreclose the possibility of a viable Palestinian State as they, together with the road system connecting them, destroy the territorial integrity of Palestine. In this sense, they act as a major impediment to the exercise of the right to self-determination within the internationally recognized self-determination unit of Palestine, i.e. the territory occupied by Israel after the 1967 war. Secondly, settlements provide daily evidence of the violation of international law and the failure of the international community, acting through the United Nations and the High Contracting Parties to the Geneva Conventions, to remedy such a situation. The despair and cynicism in the Palestinian community about the willingness of the international community to enforce the rule of law is in large measure due to its failure to halt the growth of the settler population and to persuade the Government of Israel to reverse this practice.

73. The link between settlements and violence in the present intifada is clear. Many of the acts of violence carried out by the IDF and settlers that have resulted in Palestinian deaths and injuries have occurred on the heavily defended roads leading to settlements or in the proximity of settlements. Settlements provide a visible and proximate target for the anger fuelled by years of

Israeli occupation. The IDF convoys and bases in the proximity of settlements aimed at the protection of such settlements have been the focal point of Palestinian demonstrations, violence and sharpshooting. Likewise, much of the Palestinian property bulldozed by the IDF has been destroyed not in the interests of military security, but the security of settlers. Homes, fruit and olive trees and crops have been destroyed by the IDF in order to make settlers feel more secure and to facilitate their access to their settlements by means of protected roads.

74. Settlers, too, have suffered from their proximity to the Palestinian people. As the most visible symbols of occupation, they are obvious targets for Palestinian gunmen.

75. Without settlements or settlers, there can be no doubt that the number of deaths and injuries in the present intifada would have been but a small fraction of their current number and, quite possibly, the present intifada might not have occurred. Both Israelis and Palestinians are therefore paying a high price in terms of life, bodily integrity and property for a programme that violates a cardinal principle of international humanitarian law.

76. Settlements act as a perpetual reminder to the Palestinian people of the humiliation of military occupation. This sense of humiliation is aggravated by the apparently comfortable way of life of the settlers, whose standard of living contrasts sharply with the poverty of their Palestinian neighbours. Refugees in crowded camps, with poor sanitation and limited water resources, inevitably view with envy and anger settlements with swimming pools and well-watered lawns.

77. Palestinian witnesses before the Commission, from all sections of the community, despite being of different political persuasions and from different income groups, spoke with equal anger and resentment about the presence of settlements and settlers in their territory. Many claimed settlements were a prime cause of the present intifada, a view shared by international organizations working in the West Bank and Gaza.

78. The Commission reaffirms that settlements in the West Bank and Gaza constitute a major violation of international humanitarian law and identify the presence of settlements and settlers as a primary cause of many violations of human rights in the OPT.

VIII. DEPRIVATION OF THE ENJOYMENT OF ECONOMIC AND SOCIAL RIGHTS: EFFECTS OF CLOSURES, CURFEWS, RESTRICTIONS ON MOVEMENT AND DESTRUCTION OF PROPERTY

Introductory note

79. It needs to be kept in mind that the Palestinian population in the occupied territories is, even under normal conditions, very poor, particularly the 50 per cent of the Palestinians living in refugee camps. To impose additional burdens on such a population is inevitably to create patterns of severe material, social and psychological hardships. These hardships entail denials of basic human needs, as protected by international human rights standards, which raises important issues of international law. To claim a security justification for policies that inflict such pronounced harm imposes a heavy burden of persuasion on the claimant, in this case the Government of Israel. The internal closures seem to have a mainly punitive character quite

unrelated to security and are more likely to have the opposite effect of inflaming Palestinian resistance. Even external closures, especially for the import of building materials and the export of agricultural products, would seem to be unrelated to the maintenance of security. The condensed presentation of the effects of closure and related policies in this section of the report must be read with such considerations in mind.

Restrictions on movement

80. Since 29 September 2000, Israel has imposed severe restrictions on freedom of movement in the occupied territories. During the 123-day period from 1 October 2000 to 31 January 2001, the Israeli-Palestinian border was closed for labour and trade flows for 93 days, or 75.6 per cent of the time. Internal movement restrictions and internal closures - partial or severe - were in place for 100 per cent of the time in the West Bank and for 89 per cent of the time in Gaza. The Dahania Airport in the Gaza Strip, the only Palestinian airport, was closed for over half of this period. During this 123-day period, the international border crossings to Jordan from the West Bank and to Egypt from Gaza were closed for more than 20 per cent and 40 per cent of the time, respectively. The safe passage connecting the Gaza Strip and the West Bank was closed from 6 October, greatly obstructing travel for Palestinians and diminishing the governmental effectiveness of the PA.

81. The cumulative effect of these restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege. It has resulted in severe socio-economic hardships in the Palestinian territory. The internal closures have effectively sealed Palestinian population centres and restricted movement from one locality to another. The restriction on the entry of Palestinians into Israel has meant denial of access to their places of work in Israel to an estimated 100,000 Palestinians. The economic results have been devastating: the families of these workers are now suffering from a complete lack of income, threatening them with destitution. The World Bank's projection that the impact of closure will raise unemployment to 50 per cent and the poverty rate to 43.7 per cent in 2001 has almost been realized.

Internal closure

82. The internal closure has disrupted life within the territories. Workers are unable to reach their places of work. Produce from farms cannot reach markets. Shops and commercial offices are unable to open. From 8 October, numerous limitations were placed on passage between the north and the south of the Gaza Strip and movement between Gaza City and the cities of Khan Yunis and Rafah was prevented almost entirely. Movement within the West Bank has become nearly impossible. Hundreds of IDF checkpoints have been erected throughout the West Bank and entry to and exit from cities requires passing through them. The IDF has placed checkpoints at the entrances to all villages and entry and exit are possible only via dirt roads, entailing enormous hardships. Trips that once took 15 minutes now take several hours. In some of the villages, mostly in areas near settlements and bypass roads, the dirt roads have also been blocked with large concrete blocks and piles of dirt, and residents are imprisoned in their villages. The Commission itself observed such IDF checkpoints and concrete blocks and piles of dirt obstructing access.

External closure

83. The closure of the international border crossings with Jordan and Egypt, as well as the restrictions on movement of goods from Israel to the territories, has had a direct negative effect on all sectors of the economy. The near total interruption of the supply of basic construction materials has closed factories and plants dependent on these materials for their production activities. The construction and building sector in the Palestinian territories has been practically suspended owing to imports of basic construction materials such as cement, steel and timber being denied entry by the IDF through their control of border checkpoints. This, in turn, has resulted in the unemployment of tens of thousands of workers and employees in the construction and building sector. The overall disruption of the economy and unemployment, together with mobility restrictions and border closures, have resulted in an average unemployment rate of 38 per cent (more than 250,000 persons) as compared to 11 per cent (71,000 persons) in the first nine months of 2000. According to one estimate, unemployment now directly affects the income of about 910,000 people or 30 per cent of the population.

Curfews

84. Curfews have been imposed in certain areas of the occupied territories, which in effect imprisons an entire population in their homes. For example, Palestinians in the H2 area of Hebron have been under curfew almost continuously since October 2000. The curfews appear to be imposed for the convenience of settlers in the area as they do not apply to settlers. The character and timing of Israel's restrictions on the freedom of movement challenge the contention that these restrictions are dictated purely by security considerations: Israel has imposed a sweeping closure, curfew and siege on millions of people, rather than on individuals who pose a security threat. In addition, the policy of restrictions of movement discriminates between the two populations living in the occupied territories, namely Palestinians and non-Palestinians, since the restrictions are imposed exclusively on the Palestinian population. In many cases, the explicit aim of the restrictions is to ensure freedom of movement for the settler population at the expense of the local population.

Negative economic impacts

85. In the absence of border closures, per capita income was projected to be about US\$ 2,000 in the Palestinian territories in the year 2000. As a result of border closures and internal movement restrictions, this is estimated to be reduced to US\$ 1,680, a decline of 16 per cent. The gravity of this negative impact is measured, however, by the disproportionately high impact on people living below the poverty line (estimated by the World Bank at US\$ 2.10 per person per day in consumption expenditures). The number of poor is estimated to have increased from about 650,000 persons to 1 million persons, an increase of over 50 per cent. Given the continuing closures and restrictions of movement of people and goods and the resultant unemployment and total deprivation of income to increasing numbers of the population, poverty and near destitution are mounting. Humanitarian assistance has dramatically increased.

Economic losses

86. The direct economic losses arising from movement restrictions are estimated at 50 per cent of gross domestic product (GDP) for the four-month period of the second intifada and 75 per cent of wage income earned by Palestinian workers in Israel. The GDP loss is estimated at US\$ 907.3 million, while the loss of labour income from employment in Israel is estimated at US\$ 243.4 million. The total loss is estimated at US\$ 1,150.7 million. The loss is about US\$ 11 million per working day or US\$ 3 per person per working day during the period 1 October 2000-31 January 2001. Significant decreases in earnings in the transportation sector have been reported as a result of the internal siege. The tourism sector has also reported significant decline.

Public sector revenue losses: revenue losses and increased social spending

87. There have been significant losses to the public sector in the form of lost revenues. Domestic income and value added tax (VAT) revenues have been reduced as a result of lower levels of domestic income caused by disruptions in production and reduced labour flows into Israel. External revenues, mainly customs and VAT revenues associated with imports from Israel and abroad, have been reduced by lower commodity flows caused by movement restrictions and reduced consumer demand. In 1999, 63 per cent of all Palestinian Authority revenues were in the form of transfers of receipts collected by the authorities under the terms of the Paris Protocol on Economic Relations of 1994. VAT, customs, income tax, health fees and other taxes collected by Israel on behalf of the PA are estimated at US\$ 53 million monthly. These revenues have been withheld from the PA since October 2000. As a result of the eroded revenue base, the PA has been unable to pay salaries to its employees.

Destruction of property

88. There has been continued destruction of property, in particular in the vicinity of settlements or bypass and access roads to settlements, allegedly on grounds of military necessity or security considerations. On 7 October 2000, Israeli tanks and bulldozers invaded the Netzarim Junction and destroyed two residential buildings comprising 32 apartments near the Israeli military outpost. On 8 October, the IDF destroyed an iron-processing factory in the Netzarim area, while in the same area bulldozers swept the agricultural land on the south-eastern and south-western sides of the junction. On 16 October, bulldozers swept land to the north of Neve Dekalim settlement. On 19 October, the IDF swept land leading to the Gush Katif settlement bloc. The Commission visited this area and observed the destruction of the farms, the sweeping of the land and the destruction of citrus and olive trees. This process of destruction of farms, cutting down of fruit trees and demolition of greenhouses planted with vegetables continues. The Commission received evidence from victims whose homes and greenhouses had been destroyed, citrus and olive trees uprooted and farmlands swept by bulldozers.

89. According to one estimate, the Israeli authorities demolished 223 Palestinian-owned buildings during 2000: 68 in the West Bank (including East Jerusalem) and 155 in the Gaza Strip.

Effect of closures and movement restrictions on health care

90. The Commission received evidence of the restrictions obstructing access by the sick and the wounded as well as pregnant women to hospitals. There have also been instances where the prolonged closure of outside borders, including the airport in Gaza, impeded the transfer of wounded Palestinians to other countries for treatment. An example of the effect of denial of access to hospitals is provided by statistical data from St. Luke's Hospital in Nablus, which reported a 38 per cent decline in the admission rate, a 29 per cent decline in the occupancy rate, a 53 per cent decline in the number of surgical operations performed, a 20 per cent decline in the number of babies delivered, a 48 per cent decline in the number of patients in the intensive care unit, a 49 per cent decline in the number of general practice patients, a 73 per cent decline in the number of visits to specialty services and a 30 per cent decline in the number of physiotherapy cases in the period October-November 2000 as compared to the same period in 1999.

Effect of closures and movement restrictions on education

91. Since the beginning of October 2000, more than 40 schools are reported to have been closed or unable to operate owing to curfews or closures. In the centre of Hebron, 34 schools have been closed, resulting in unemployment for more than 460 teachers, and 13,000 students were reported to be without educational facilities. Four Palestinian schools in Hebron have been closed by the IDF and turned into military bases: the M'aref School, Usama bin Munkez School, the Johar School and the Al Ukhwa School. Several thousand children are reported also to have had to be permanently moved from school premises as a result of damage to the school structure.

92. Schools near flashpoints - 173 in the West Bank and 23 in the Gaza Strip - were the worst hit. They were subjected to several kinds of assault, including bombing by the Israeli army and shooting by settlers.

Violations of internationally recognized human rights norms and international humanitarian law

93. The measures of closure, curfew or destruction of property described above constitute violations of the Fourth Geneva Convention and human rights obligations binding upon Israel. Destruction of property is prohibited by article 53 of the Fourth Geneva Convention, unless such destruction is rendered absolutely necessary for military operations, which does not appear to be the case for much of the destruction carried out. Other obligations under the Fourth Geneva Convention affected by closures are those under articles 23, 55 and 56. These require the free passage of consignments of medical and hospital stores and the free passage of foodstuffs, clothing and medicines intended for certain vulnerable categories of persons and impose a duty to ensure food and medical supplies to the population and to ensure and maintain medical and hospital establishments and services and public health and hygiene in an occupied territory.

94. Human rights norms are also apposite in the context of the closures because, in the Interim Agreement, Israel and the Palestinian Council accepted that they should exercise their powers and responsibilities pursuant to that Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law.² Human rights violated by

the closures include the right to work, internationally recognized in article 6 of the International Covenant on Economic, Social and Cultural Rights. The severe socio-economic hardships caused by the restrictions on movement constitute a violation of the right to an adequate standard of living recognized in article 11 of that Covenant. Destruction of houses that leaves the occupants homeless also violates this right, since it specifically includes the right to adequate housing. The closures and movement restrictions interfere with the right of everyone to education. Children and students are prevented from attending classes, despite the duty of States to make secondary and higher education accessible to all by every appropriate means. In addition, restrictions on movement are also placed on journalists. This affects their reporting of events and constitutes a violation of their freedom of expression and, indirectly, of the population's right to seek and receive information, recognized in article 19 of the Covenant. This right may be subjected to certain restrictions, but only in certain circumstances and not as a general rule. The Palestinian Authority has also restricted the freedom of movement of journalists.

95. Finally, attention is drawn to article 33 of the Fourth Geneva Convention, which prohibits collective punishment. Israel has invoked security considerations to justify closures and other measures described above. From the Commission's own observations, it would appear that while in some instances security considerations may justify temporary closures, the comprehensive and protracted closures, as well as the scale and nature of the destruction of property of Palestinian civilians, is best regarded as collective punishment.

IX. PALESTINIAN REFUGEES AND THE SECOND INTIFADA

96. The Commission seeks to draw attention to the distinctive vulnerability of Palestinian refugees as a special case of hardship during the course of the second intifada, particularly as a result of the Israeli policies of closure and blockade. It needs to be appreciated that, according to UNRWA figures for 2000, there are 1,407,621 registered Palestinian refugees living in the West Bank and Gaza, comprising over 50 per cent of the Palestinian population in these territories. That figure represents only 38 per cent of the total Palestinian refugee population, the remainder being spread out mainly in Jordan, Lebanon and the Syrian Arab Republic. There are two sets of issues relevant to our inquiry: first, the vulnerability of Palestinian refugees living in refugee camps on the West Bank and Gaza, and second, the so-called "right of return" issue.

97. There is, first of all, the anomalous status of Palestinian refugees due to their exclusion from the protective mechanisms and responsibility of UNHCR. No other refugee community in the world is so excluded. UNRWA was established in 1949 to address the specific concerns of Palestinian refugees and became operational in 1950. This special regime acknowledging the importance of the refugee dimension of the Israel-Palestine relationship was reinforced over the years by critical United Nations resolutions dealing with the conflict. UNRWA was given responsibility for humanitarian aspects of the international effort to alleviate the material suffering of Palestinian refugees, but it was not entrusted with any protective functions. These functions were assigned to a parallel entity called the United Nations Conciliation Commission for Palestine (UNCCP), which, ironically, was established in response to General Assembly resolution 194 (111) calling for the protection of Palestinian refugees. Unlike UNRWA, UNCCP has been incapable of carrying out its functions, encountering political and financial

obstacles from its inception. Although UNCCP continues to exist on paper, it lacks a budget and personnel, and is effectively defunct. Yet, this organizational structure continues to define the legal status of Palestinian refugees.

98. In accordance with the 1951 Convention relating to the Status of Refugees, protection is accorded to all refugees under the authority of UNHCR except for the Palestinians. They are excluded because of article 1D of the 1951 Refugee Convention, which provides:

“This convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.”

Despite the failure of UNCCP to supply the anticipated protection, Palestinian refugees remain in limbo and have never in the more than half a century of their existence been incorporated within the UNHCR regime.

99. Such a result is particularly disturbing as article 1D explicitly recognizes the possibility that alternative forms of protection may fail for one reason or another. The language of the second paragraph of 1D is clear beyond reasonable dispute on this matter:

“When such protection or assistance has ceased for any reason, without the persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.”

There is no discernible reason to refrain from implementing this inclusionary provision, which should have been implemented decades ago.

100. The issue is not trivial. For one thing, the Commission was repeatedly told by a variety of witnesses, supplemented by documentary materials, that the refugees in the camps in the occupied territories were enduring hardships that exceeded those being experienced by the general Palestinian population, and that UNWRA officials felt unable to raise questions of a protective nature, regarding them as outside their humanitarian mandate and of a “political” character.

101. These protective concerns are directly associated with the distinctive pressures exerted by Israeli responses to the second intifada. The refugee camps are often prominent flashpoints in relations with the IDF and the settlements, prompting retaliatory “security” measures, especially prolonged closures, including blockages of access roads. Refugees are trapped in these overcrowded camps, prevented from going to places of employment and often denied access to educational and medical facilities. The incidence of destitution resulting from the impact of the second intifada is significantly higher for refugees than for non-refugees, and is felt more keenly, as refugees lack land for subsistence agriculture or within which to move about. Our visits to several Palestinian refugee camps revealed to us the special sense of material and psychological hardship associated with the confinement and curfews of this period of intifada. Under such conditions, it is hardly surprising that much of the support for Palestinian militancy and armed struggle is generated within the refugee camps.

102. The second, wider question, which is associated with the right of return, concerns the future of refugees outside the territories as well as those within, and is mostly beyond the scope of the Commission's central mandate. Its relevance arises from the degree to which Israelis insist that accepting such a right would be an act of suicide on the part of Israel and that no State can be expected to destroy itself. Such an apocalyptic approach to the refugee issue obstructs overall moves towards a just peace.

103. In conclusion, the Palestinian refugees within the territories seem worse off than the Palestinian refugee diaspora in neighbouring countries. Further, the deterioration of their circumstances throughout the West Bank and Gaza has been accentuated by the heightened tensions and violence of recent months. These refugees require a variety of emergency protections that can only be provided by a concerted effort on an urgent basis at the international level. UNRWA, with its resources already strained and its operating conditions subject to interference, is not capable of providing the necessary protection.

X. CONCLUSIONS AND RECOMMENDATIONS

104. The commission of inquiry has been deeply mindful of its responsibility to exercise every care to be objective and impartial in gathering information and evaluating the evidence upon which it would base its conclusions and recommendations with the aim of calling attention to violations of human rights and international humanitarian law since 29 September 2000, and encouraging future compliance with international obligations to the extent possible.

105. In making its recommendations, the Commission from the outset emphasizes the need to understand the context and circumstances in which violations of human rights and breaches of international humanitarian law have occurred and the situation which has given rise to an ascending spiral of violence since the end of September 2000, resulting in a serious deterioration of the human rights situation.

106. The historical context is one of conflict and successive wars (over 50 years), prolonged occupation (over 30 years) and a protracted peace process (over 7 years). The peoples affected continue to suffer from a legacy of distrust, humiliation and frustration, only occasionally relieved by glimmerings of hope, which has all but disappeared of late.

107. The most worrying aspect of the recent escalation of violence leading to the loss of lives, disabling injuries caused to thousands, and the destruction of property and livelihoods is that the hopes and expectations created by the peace process are for the moment being smothered by mutual perceptions ascribing the worst of motives to each other, thus generating intense distrust and negative and destructive emotions.

108. It is important to emphasize that both the Palestinian people and the people of Israel have a yearning for peace and security, and that a precondition for achieving a just and durable peace is for every effort to be made on all sides to ease tensions, calm passions and promote a culture of peace. This could be helped if the process through which negotiations for peace are pursued is transparent, so that both Palestinian and Israeli public opinion can be built up in support of the process and of its eventual outcome. In this way, the mutual confidence upon which a durable peace must rest could be nurtured.

109. The Commission was encouraged by the extent to which its own assessments of the main issues addressed in the report substantially coincided with the most trustworthy third party views, including those of diplomatic representatives of the European Union and senior international civil servants with years of experience in the region. Thus, an informed and impartial consensus reinforces the conclusions and recommendations set forth here.

110. It is with an understanding of the tragic history of the peoples involved, and its psychological legacy, that our recommendations, aimed at discouraging the persistence of recent violations of human rights, are set out in three parts. The first part seeks to address the root causes that need to be resolutely addressed and resolved. The second part lists safeguards and procedures that need to be observed while negotiations aimed at a comprehensive, just and durable peace are pursued in good faith. The third part presents a series of measures which can be taken immediately to deter further violence and to end the destruction of lives, property and livelihoods. The fourth part is more ambitious, recommending steps for establishing a climate conducive to the emergence over time of a just and durable peace for the peoples of Israel and Palestine.

1. Conditions for a just and durable peace

111. A comprehensive, just and durable peace is to be sought through negotiations in good faith that would end the occupation and establish a dispensation that meets the legitimate expectations of the Palestinian people concerning the realization of their right to self-determination and the genuine security concerns of the people of Israel.

112. While noting that it is the Israeli position that occupation has in effect ended in much of the occupied territories following the agreements reached leading to the establishment of the Palestinian Authority, as well as the fact that the ultimate disposition of the settlements in those territories is a matter for negotiation between the parties, it needs to be recognized that, from the Palestinian perspective, so long as the settlements remain as a substantial presence in the occupied territories, and Israeli military forces are deployed to protect those settlements, no meaningful end to occupation can be said to have taken place.

2. Human rights and humanitarian law imperatives

113. The framework for a final peaceful settlement and the process through which it is pursued should be guided at all stages by respect for human rights and humanitarian law and the full application of international human rights standards set out in the Universal Declaration of Human Rights and in applicable human rights instruments, in particular those relating to women, children and refugees.

114. An adequate and effective international presence needs to be established to monitor and regularly report on compliance by all parties with human rights and humanitarian law standards in order to ensure full protection of the human rights of the people of the occupied territories. Such an international mechanism should be established immediately and constituted in such a manner as to reflect a sense of urgency about protecting the human rights of the Palestinian people.

115. Protection needs to be accorded to the people of the occupied territories in strict compliance with the 1949 Geneva Convention Relative to the Protection of Civilians in Time of War (Fourth Geneva Convention). The High Contracting Parties, individually and collectively, need urgently to take appropriate and effective action to respond to an emergency situation calling for measures to alleviate the daily suffering of the Palestinian people flowing from the severe breaches of the Fourth Geneva Convention. Article One of the Convention places a duty on the High Contracting Parties "to respect and ensure respect" of the provisions of the Convention "in all circumstances". The Commission recalls that the Conference of the High Contracting Parties to the Fourth Geneva Convention, convened in Geneva on 15 July 1999, in its concluding statement reaffirmed the applicability of the Fourth Geneva Convention to the occupied Palestinian territory, including East Jerusalem, and reiterated the need for full respect for the provisions of the Convention in that Territory, and further recorded the following decision:

Taking into consideration the improved atmosphere in the Middle East as a whole, the Conference was adjourned on the understanding that it will convene again in the light of consultations on the development of the humanitarian situation in the field.

In view of the serious deterioration of the humanitarian situation in the Territory, the Commission recommends that the High Contracting Parties should act with urgency to reconvene the Conference. Such a Conference should establish an effective international mechanism for taking the urgent measures needed.

3. Urgent measures for the protection of human rights

116. It seems incontestable that the Israeli Security Forces (i.e. the IDF and the Israeli Police Force) have used excessive and disproportionate force from the outset of the second intifada, whether their conduct is measured by the standards of international humanitarian law applicable to armed conflict, the codes of conduct applicable to policing in situations not amounting to armed conflict or by the open-fire regulations binding upon members of the Israeli Security Forces. In these circumstances there is an urgent need for the Israeli Security Forces to ensure that, even in life-threatening situations, great care is taken not to inflict injury on civilians not directly involved in hostile activities and not to cause disproportionate harm and injury. In non-life threatening situations, particularly demonstrations, the security forces should comply fully with the policing codes of 1979 and 1990, as well as their own open-fire regulations. Every effort should be made by the Government of Israel to ensure that its security forces observe these rules, that such rules are made effectively known to members of the security forces, that the rules are not arbitrarily and summarily altered and that it is made clear to the security forces that violations will result in meaningful disciplinary action being taken against them.

117. The Israeli Security Forces should not resort to the use of rubber-coated bullets and live ammunition, except as a last resort. Even in life-threatening situations minimum force should be used against civilians. The Israeli Security Forces should be amply equipped and trained in non-lethal means of response, particularly for dealing with violent demonstrations. Every effort should be made to use well-established methods of crowd control.

118. The use of force by the IDF in the exercise of its role of providing security to settlers is also subject to international humanitarian law standards, including the Fourth Geneva Convention, and cannot be used for pre-emptive shooting of unarmed civilians in areas near settlements or on access and bypass roads leading to settlements or for the destruction of Palestinian property, including the demolition of homes, the cutting down of trees and the destruction of farms, and appropriate instructions to that effect should be issued to all concerned.

119. Targeted shooting of individuals by the IDF or by settlers or by sharpshooters of either side amounts to extrajudicial execution, which is a gross violation of the right to life, constitutes a breach of international humanitarian law and would attract international criminal responsibility. Instructions should be urgently issued and disseminated by all the concerned authorities immediately to end such targeted killing.

120. Complaints regarding the use of lethal force or the excessive use of force which has caused death or serious injury should be investigated and persons found responsible should be held accountable and should not enjoy impunity.

121. Immediate and effective measures need to be taken to end closures, curfews and other restrictions on the movement of people and goods in the occupied territories so that the right to livelihood and normal economic activities are restored, as also the right of access to education and health.

122. Immediate and effective measures need to be taken to prevent the destruction of property in the occupied territories, including the demolition of houses, the cutting down of fruit and other trees, and the destruction of farms and standing crops by the use of bulldozers and other means.

123. Prohibitions and restrictions derogating from the rights of the Palestinian people, including economic and social rights, imposed by invoking security considerations must be specifically justified and are in all cases subject to compliance with international humanitarian law standards.

124. All concerned authorities must refrain from measures that amount to collective punishment. This would include withholding transfer to the Palestinian Authority of taxes and duties collected by the Government of Israel, the imposition of restrictions on movement, or violent acts of reprisal by either side.

125. Instructions need to be issued immediately by all concerned authorities to security forces strictly to refrain from using force against or impeding the provision of medical relief and treatment by those working for the Red Cross, the Red Crescent and Magen David Adom, and in hospitals, and to ensure protection to ambulances and hospitals. These instructions should require all concerned to ensure unimpeded access for the sick, the injured and pregnant women to hospitals.

126. Compensation should be provided to victims of unlawful use of force where this has caused death, disablement, destruction of property or economic loss.

127. All impediments to the flow of humanitarian assistance, now even more urgently needed, should be removed as a matter of urgency and every effort should be made to facilitate the work of the United Nations and other bodies involved in providing humanitarian assistance and medical relief.

128. The life and safety of children and their access to education and health care should be especially protected. Special instructions should be urgently issued prohibiting shooting at unarmed children and pointing out that such acts would engage international and national criminal responsibility. Every care should be taken to ensure that children are not involved in situations where they expose themselves to risk of becoming victims of acts of violence.

129. Steps should be taken to apply article 1D of the 1951 Convention relating to the Status of Refugees to ensure that a regime of protection under the authority of the United Nations High Commissioner for Refugees is extended to Palestinian refugees, especially those currently residing in West Bank and Gaza camps. These refugees have been particularly victimized during the second intifada, are not now protected by the application of the UNRWA framework and urgently require international protection on a priority basis.

130. A mutually acceptable comprehensive settlement must deal equitably with the issue of Palestinian refugees and their rightful claims, including those refugees living outside of the Palestinian Territories. Such arrangements should be negotiated in a manner that is sensitive to legitimate Israeli concerns.

131. All restrictions on access to places of worship and all holy sites should be removed and access to them by all faiths should be respected.

4. Transforming the climate of hostility

132. The Euro-Mediterranean Agreement between the European Communities and their Member States and the State of Israel declares in article 2 that their relationship is to be based on respect for human rights and democratic principles which guide their internal and international policy; this could provide the basis for an initiative by the former to play a more pro-active role in promoting acceptance and implementation of these recommendations and in supporting the holding of consultations and dialogue at all levels between the Palestinian people and the Israeli people.

133. To improve prospects for durable peace, especially given the fundamental gaps in perception that currently separate the two sides, it is strongly recommended that the Commission on Human Rights take concrete steps to facilitate dialogue between representative Israelis and Palestinians at all levels of social interaction, formally and informally. In this regard, the Commission on Human Rights is urged to convene a consultation between leaders of Israeli and Palestinian civil society on a people-to-people basis in Geneva at the earliest possible time. In a similar spirit, to engage Europe more directly in the realities of the crisis the Commission on Human Rights is urged to convene a round table of representatives of European civil society and government to discuss steps that can be taken to alleviate the suffering of the Palestinian people and to ensure greater respect on both sides for human rights standards and for international humanitarian law.

134. In view of the comprehensive denial of human rights and the continuing pattern of behaviour violative of international humanitarian law, this Commission recommends to the Commission on Human Rights that it establish a high profile periodic monitoring and reporting undertaking to consider the degree to which the recommendations of this report to the parties are being implemented.

Notes

¹ The resort to shooting by the Israeli police at Harem-al-Sharif/Temple Mount on 29 September 2000 that started the second intifada was, by reliable accounts, not a response to Palestinian gunfire. This raises a serious question about the insistence on the part of the Government of Israel that lethal weapons have only been used in response to Palestinian gunfire.

² Interim Agreement of 28 December 1995, article XIX. Without this Agreement, Israel would still be bound to ensure civil and political rights that are non-derogable to the population of the occupied territories. Article 1 of the International Covenant on Civil and Political Rights requires that it protect the rights of all individuals subject to its jurisdiction, that is individuals under its effective control. The International Covenant on Economic, Social and Cultural Rights does not refer to individuals under the State's jurisdiction, which makes its application to the population of the occupied territories more doubtful. Israel became a party to the two International Covenants in 1991.

Annex I

**EXTRACT FROM RESOLUTION S-5/1 ADOPTED BY THE
FIFTH SPECIAL SESSION OF THE COMMISSION ON
HUMAN RIGHTS ON 19 OCTOBER 2000**

6. Decides

(a) To establish, on an urgent basis, a human rights inquiry commission, whose membership should be based on the principles of independence and objectivity, to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories and to provide the Commission with its conclusions and recommendation, with the aim of preventing the repetition of the recent human rights violations.

Annex II

HUMAN RIGHTS INQUIRY COMMISSION (HRIC)
PROGRAMME OF VISIT TO THE OCCUPIED PALESTINIAN
TERRITORIES AND ISRAEL

11-18 FEBRUARY 2001

Professor John Dugard, Dr. Kamal Hossain, Professor Richard Falk

The Commissioners were accompanied throughout the mission by a Coordinator, a Security Adviser, three professional officers, an interpreter and two secretaries. Additional logistical support and interpretation assistance was provided by the local OHCHR offices, UNRWA and UNSCO. The Security Adviser was in the area continuously from 7 to 20 February.

Saturday, 10 February (Gaza Strip)

2.45 p.m. Arrival at Ben Gurion Airport, Tel Aviv
Drive to Gaza City, Gaza Beach Hotel

Palestinian Authority Headquarters

6-7 p.m. Meeting with the President of the Palestine National Authority
Mr. Yasser Arafat

Gaza Beach Hotel

Sunday, 11 February (Gaza Strip)

Palestinian Authority

9.30-10.15 a.m. Palestinian National Security - General Abdel-Raziq El-Majayda

10.30-11.30 a.m. Ministry of Planning and International Cooperation -
Dr. Ali Sha'ath

11.45 a.m.-12.45 p.m. Ministry of Justice - Mr. Freih Abu Middain (Minister of Justice)

1-2 p.m. Lunch with Minister of Justice

2.45-4 p.m. Consultations at OHCHR Gaza office

4.30-5.15 p.m. Ministry of Social Affairs - Mr. Mahmoud M. Matair
(General Director)

- 5.30-6.15 p.m. The Palestinian Red Crescent Society - Dr. Fathi Arafat
(Former Director)
- 6.30-8.45 p.m. Ministry of Health - Dr. Riyad El-Zanoun (Minister of Health)

Monday, 12 February (Gaza Strip)

Gaza Beach Hotel - Meetings with NGOs

- 9-9.45 a.m. Palestinian Center for Human Rights - Raji Sourani (Director)
- 9.45-10.30 a.m. Al-Mezan Center For Human Rights - Issam Younis (Director)
- 10.30-11.15 a.m. Gaza Community Mental Health Programme - Dr. Eyad El Sarraj
(Director)

Palestinian Authority

- 11.15 a.m.-12.30 p.m. Ministry of Housing - Abdel Rahman Hammad and
Abde Kareen Abdeen
(Professor Dugard)
- 11.30 a.m.-12 noon Palestinian Agricultural Relief Committees -
Abed El Kareem Ashour
(Professor Falk and Dr. Hossain)
- 12 noon-12.45 p.m. Palestinian Medical Relief Committees - Abdel Hadi Abu Khosa
Union of Palestinian Medical Committees - Dr. Rabah Mohana
National Palestinian Society for Handicapped - Mohammed Zein
El-Dein
(Professor Falk and Dr. Hossain)

**United Nations Special Coordinator's Office (UNSCO) Headquarters - Collective meeting
with United Nations agencies**

- 1.15-2 p.m. UNSCO - Francis Okello (Deputy Special Coordinator)
World Food Programme (WFP) - Mushtaq Qureshi
UNICEF - Bertrand Bainzel
World Health Organization (WHO) - Dr. Giuseppe Masala
UNESCO - Veronique Dauge
Office of the Coordinator for Humanitarian Affairs - Nick Harvey

UNSCO Headquarters - Meetings with Palestinian resource persons

- 3.15-3.50 p.m. Hayder Abdel-Shafi, Commissioner, Palestinian
Independent Commission for Citizens' Rights

- 3.55-4.30 p.m.** Ziad Abu Ammer, member of the PLC, academic expert
- 4.35-5.10 p.m.** Abdel-Rahman Abu El-Nasr
(President of Bar Association)
- 6.30-7.30 p.m.** International Committee of the Red Cross (ICRC)
Stephane Jacquier

Al-Deera Hotel Dinner

- 8.30 p.m.** Hosted by Deputy South Africa Representative, Susan Heher
Also present: Peter Hansen, Francis Okello and Stephane Jacquier

Tuesday, 13 February (Gaza Strip and Jerusalem)

UNRWA (United Nations Relief and Works Agency) Headquarters, Gaza

- 9-10 a.m.** Peter Hansen (Commissioner General),
Karen Koning Abu Ziad (Deputy Commissioner-General),
Mian Qadrud-Din (Chef de Cabinet),
Lionel Brisson (Director of Operations)
(list not exhaustive)

Visits to the sites affected by bombing

- 10.30 a.m.** Stop at Netzarim Junction
- 11 a.m.** Stop at Qarara area, at 640 metres from the Kusufim road,
bulldozed land, demolition of houses and wells, uprooting of trees.
The Commission interviewed Jomad Mossallam Ali Someiri, head
of a household of 23 members. Demolition began at night, during
the period of Ramadan.
- 11.30 a.m.** Khan Yunis Camp - visit to Tufah checkpoint where on the
previous day a number of Palestinians had been injured during
clashes with Israelis. The Commission was caught in an outburst
of crossfire initiated by the Palestinian side, which continued while
the Commission was in the area. During this time, a child of
14 years was shot in the stomach causing extensive liver damage.
The x-ray and the bullet (live .556 round) were recovered by the
Commission. One youth of 20 years was shot in the testes.
- 12 noon** Visit to local UNRWA office - interviews
- 1 p.m.** Visit to Khan Yunis hospital - briefing by the Director, Dr Agha.
Visit to patients recovering from exposure to tear gas

- 2 p.m.** Stop on the other side of the Kusufim road in Qarara. Meeting with a family whose house was demolished on 22 November 2000 by the IDF. They only had 10 minutes' notice and could not salvage any movable property. Three bulldozers worked for three days to clear the area. Altogether some 33 families were affected by demolition.
- 3.45 p.m.** Lunch hosted by UNRWA at United Nations Reporting and Evacuation Centre, Gaza
- UNSCO Headquarters**
- 5-6.45 p.m.** Meeting with victims and their families, (organized by Ministry of Social Affairs, General Workers' Union, Union of Medical Relief Committees and Gaza Community Mental Health Programme) (Dr. Hossain)
- 5-6.15 p.m.** Collective meeting with the press
Suod Abu Ramadan (Journalists Association)
Fayed Abu Shammalah (journalist, BBC)
Rasmalli (Daily newsletter)
(Professors Dugard and Falk)
- 6.15-6.45 p.m.** Meeting with Minister of Environment (Yousif Abu Safya) and colleagues
(Professor Falk)

Departure for the West Bank - American Colony Hotel, Jerusalem

Wednesday, 14 February (Jerusalem)

UNDP office, Jerusalem

- 8-9 a.m.** United Nations Development Programme (UNDP)
Timothy Rothermel, Special Representative

American Colony Hotel, Jerusalem

- 10 a.m.-12.30 p.m.** Meeting with Israeli NGOs
B'Tselem - Yael Stein (Research Director)
The Alternative Information Center (AIC) - Sergio Yahni (Director)
The Association for Civil Rights in Israel - Risa Zoll (Attorney and International Relations)
Hamoked, Center for the Defence of the Individual -
Dalia Kerstein (Director)

I'lam Center, Media Center for the Palestinian Society in Israel -
Maria de Pina (Public Relations Coordinator) and Falastin Ismail
(Director)
Mosawa Center for Arab Rights in Israel - Sana Hammond (Policy
Advocate)
Public Committee against Torture in Israel - Hanna Friedman
(Executive Director)
Arab Association for Human Rights - Mohammed Zeidan
(Director)
Rabbis for Human Rights - Rabbi Jeremy Milgrom and
Rabbi Arik Ascherman
Physicians for Human Rights - Dr. Hedva Radovanitz
(Executive Director)
Ihijaha Union of Arab Community-Based Associations -
Monica Terazi, Ameer Makhoul ADALAH, The Legal Center for
Arab Minority Rights - Anna Massagee, Jamil Dakwar

12.30-2 p.m.	Jonathan Krensky (journalist, <u>Jerusalem Post</u>)
2-3.30 p.m.	Lunch break
3.30-4.30 p.m.	Avishai Margalit (philosopher)
4.30-5.30 p.m.	Mordechai Baron (historian)
5.30-6.30 p.m.	Ruth Gavison (law professor)

Thursday, 15 February (Ramallah and Jerusalem)

Grand Park Hotel, Ramallah

10.15-11.15 a.m.	H.E. Mr. Rafiq Al-Natsheh (Minister of Labour)
11.30 a.m.-12.15 p.m.	Dr. Mustafa Al-Barghouti (political analyst)
12.15-1.15 p.m.	Luncheon with Palestine Legislative Council (PLC) Ahmed Qu'rar - PLC Speaker Ghazi Hananya - PLC Speaker's Deputy Rawhi Fattouh - PLC Secretary Aazmi Shun'aybi - PLC Member Qadoura Fares - Chair of Human Rights Committee Mahmoud Labadi - PLC Director General
1.30-2.15 p.m.	Ghassan Faramand (Director, Law Institute, Birzeit University (BZU)) Abdul-Karim Barghouti, (Dean of Student Affairs, BZU)

Mudor Kassis, Chairperson, (Department of Philosophy and Cultural Studies and Coordinator of MA program-Democracy and Human Rights, BZU)

- 2.30-3 p.m.** Jonathan Kuttab (Al-Quds University) and Mr. Raja Shehadeh (lawyer)
- 3-3.40 p.m.** Eileen Kuttab (Institute of Women's Studies, Birzeit University)
- 3.45-4.25 p.m.** Charles Shamas (expert in international humanitarian law, Centre for Human Rights Enforcement)
- 4.45-5.25 p.m.** Omar Dajani and Stifany Khouri (Negotiations Affairs Department)
- 5.30-6.10 p.m.** Nader Saed (Development Studies Programme, BZU)
- 6.15-6.55 p.m.** Ali-Jerbawi (Professor of Political Science, Birzeit University)
- YMCA House, Jerusalem**
- 9 p.m.** Dinner with:
Amiram Goldblum (Settlement Watch, Peace Now Movement)
Mossi Raz (Peace Now Movement)
Eitan Felner (Director of B'tselem)

Friday, 16 February (Jerusalem and Ramallah)

Meetings at the American Colony Hotel - Jerusalem

- 8-9 a.m.** Breakfast meeting with members of the European Union:
Nadim Karkutli and Sylvie Fouet (European Commission)
Lars Adam Rehof and Kim Vinthen (Office of the Representative of Denmark)
Emelie Träff and Elinor Hammarskjöld (Swedish Consulate General)
Aurélie Duhamel and Eric Tison (French Consulate General)
Michael Ohrmacht (German Rep. Office)
Eija Rotinen (Office of the Representative of Finland)
Petros Panayotopoulos (Greek Consulate General)
Leo D'Aes (Belgium Consulate General)
Manuel Salazar (Spanish Consul General)
Gianni Ghisi (Italian Consul General)
Birgitta Tazelaar (Office of the Representative of the Netherlands)
Isolde Moylan-McNally (Representative of Ireland)

9-9.45 a.m.

Meeting with Christian and Muslim religious leaders
Adnan Husseini, Head of the Islamic Trust
Sheik Mohamed Hussain, Mufti of Al Aqsa Mosque
Bishop of the Armenian Orthodox Community
Father Theophilos, Greek Orthodox Patriarchate

Meeting at Orient House

10-10.45 a.m.

Mr. Faisal Al Husseini (Orient House - Portfolio - PNA)

Grand Park Hotel, Ramallah - Meetings with Palestinian NGOs

12 noon-1 p.m.

LAW (Palestinian Society for the Protection of Human Rights and the Environment) - Khader Shkirat (Director), Issa Shawki and Dianne Luping

1.15-2 p.m.

Defense for Children International, Palestine - George Abu-Zolof (Director) with Adam Hanieh, Khaled Kuzmar, Simon Awad and Ibrahim Al Masri; Badil Resource Center - Ingrid Jaradat (Director)

2-2.30 p.m.

Lunch break - Grand Park Hotel

2.30-5 p.m.

Al-Haq - Mohamed Abu-Harthieh (Director)
General Union For Disabled Persons - Ziad Amro (Director)
Jerusalem Center for Human Rights, Jerusalem Legal Aid Center - Ibad Abu Ghosh (Director) and Haifa Alyssa
Democracy and Workers' Rights Center - Mazen Barghouty (Director)
Al-Dameer for Political Prisoners - Khalida Jarrar (Director)
Women's Center for Legal Aid and Counseling - Maha Abu Dayya (Director)
Women's Studies Centre
Mandela Institute for Political Prisoners - Ahmed Al-Sayyad (Director)

During the afternoon, two meetings were held simultaneously, with one Commissioner attending one meeting and two Commissioners the second meeting.

Saturday, 17 February (Hebron/Bethlehem/Beit Jala/Jerusalem)

8-9 a.m.

Travel to Hebron

9-11 a.m.

Briefing by members of Temporary International Presence (TIP) in Hebron
Director of TIPH

Henrik Lunden (Senior Press and Information Officer)
 Velérie Petignat Wright (Head Staff Director)
 Angélique Eijpe (Legal Adviser)

- 11-11.30 a.m.** Meeting with Mr. Mustafa Al Natsha, Mayor of Hebron
- 11.30 a.m.-12.15 p.m.** Travel to Bethlehem
- 12.15-2 p.m.** Visit to Aida Refugee Camp in Bethlehem
 Aida Basic Girls' School (UNRWA) and two shelled houses
- Richard Cook (Director UNRWA Operations, West Bank)
 Brett Lodge (Operations Officer, UNRWA)
 Husni Shahwan (Area Officer for Hebron, UNRWA)
 Yahia Daage (UNRWA teacher)
 Makarem Awad (Relief and Social Service Department, UNRWA)
- 2-3.30 p.m.** Return to Jerusalem, brief lunch
- American Colony Hotel**
- 3.30-4.15 p.m.** Said Zedani (Director of Palestinian Independent Commission for Citizens' Rights)
- 4.15-5.30 p.m.** Collective meeting with journalists
 Sam'man Khoury (Palestinian Media Center)
 Nabeel Khateeb (Journalist, Director of Media Institute, Birzeit University) with the participation of Dr. Said Zedani
Nabhan Krisha (Palestinian Medical Center) and Akram Haney (Editor-in-Chief, Al Ayyam Daily) were unable to participate as they were stopped at checkpoints.
- 6 p.m.** Old City of Jerusalem
 Consultations at hotel

Sunday, 18 February (Jerusalem and Tel Aviv)

American Colony Hotel, Jerusalem

- 9-10 a.m.** Mr. Ilan Pappé (Historian)

Avia Hotel, Tel Aviv

- 12 noon-1 p.m.** General (Ret.) Shlomo Gazit
- 1.30 p.m.** Check-in at Ben Gurion Airport for 16:15 departure



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/122
18 January 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD

Note verbale dated 15 December 2000 from the Permanent Mission of Iraq to the
United Nations Office at Geneva addressed to the United Nations
High Commissioner for Human Rights

The Permanent Mission of the Republic of Iraq to the United Nations Office in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to enclose herewith a document entitled "Remarks on Iraqi Missing Persons" in Arabic, English and French.*

The Permanent Mission of the Republic of Iraq would be grateful if the High Commissioner for Human Rights could arrange to have this document distributed as an official document of the fifty-seventh session of the Commission on Human Rights, under the agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world".

* Reproduced as received, in Arabic, English and French only.

Annex

The Iraqi Missing Persons

1. The number of the Iraqi missing persons stands now at (1150) persons.
2. The Kuwaiti authorities so far have provided only scanty and contradictory information on few missing Iraqis. Almost all the information provided by the Kuwaiti authorities is to the effect that the Iraqi missing persons were residing in Kuwait before the Iraqi forces entered the country in August 1990 but know nothing about their subsequent fate.
3. For their part, the Iraqi authorities have submitted to the Kuwaiti authorities all the evidence relating to the disappearance of the missing persons and it is firm evidence meriting serious consideration. Among those missing Iraqis are civilians who were arrested in their homes in Kuwait in front of their families after the withdrawal of the Iraqi army from Kuwait. Others are civilians and military personnel who were seen by Iraqi and Arab witnesses in Kuwaiti detention centers or military hospitals during the first half of 1991 but who subsequently disappeared. While in the meetings of the Technical Subcommittee the Kuwaiti authorities kept asserting their willingness to ascertain the fate of the missing Iraqis, in practice they have so far failed to provide any information that might help in ascertaining their fate. In fact, the Kuwaiti Authorities have been ignoring all the Iraqi requests to shed light on the fate of the Iraqi missing persons. These authorities used to provide illogical answers claiming that they were not in control over the situation in Kuwait after the withdrawal of the Iraqi forces. They also claimed that some irregular groups were responsible for the arrests of the Iraqi civilians and military personnel but they were unable to identify these groups. Later, the Kuwaiti authorities retracted from this position claiming that they were under control of the situation in side Kuwait but have no information about any Iraqi missing persons.
4. In the annex to the Kuwaiti paper circulated in New York in 1998, it is stated that there is an essential difference between missing Iraqis on the one hand and Kuwaiti "prisoners of war" on the other. The Kuwaiti authorities base this distinction on the contention that the Iraqis consisted of military personnel who were lost while on duty in military operations whereas the Kuwaitis consisted of civilians and off duty military personnel. Those authorities also claim that the ICRC acknowledged this difference by referring to the Kuwaiti POW's as "missing prisoners". On this point, it should be noted that the ICRC is on record in saying that: "It has to be stressed that the expression 'missing prisoner' is not used by the Geneva Conventions and

therefore has no particular legal significance." Moreover, among the files submitted to the Iraqi authorities on the missing Kuwaitis are those relating to the scores of Kuwaiti citizens who left their homes never to return. They include those who were suffering from psychological disorders or mental illness; those who were lost in their wanderings over the desert between Kuwait and Saudi Arabia, and women who ran away from their husbands or their families for one reason or another. Can anyone, then, designate such groups as "missing prisoners" or "prisoners of war"?

5. By attempting to create a distinction between missing Iraqis and missing Kuwaitis, Kuwait has no other purpose than to shirk its obligations under the Geneva Conventions. The assertion that all the missing Iraqis were military personnel who were lost while on duty is wide of the mark, for it is well-known that a fairly large number of the missing Iraqis who had been arrested at their homes in Kuwait by the Kuwaiti security forces were unarmed civilians whose arrest took place in front of their families. On the other hand, there are many witnesses who confirm having seen Iraqi detainees in Kuwaiti detention centers at different periods.

April 2000



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/123
14 February 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Note verbale dated 15 December 2000 from the Permanent Mission of Iraq
to the United Nations Office at Geneva addressed to the
United Nations High Commissioner for Human Rights**

The Permanent Mission of the Republic of Iraq to the United Nations Office in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to enclose herewith the document entitled "Why we reject SCR 1284" in English and French.*

The Permanent Mission of the Republic of Iraq would be grateful if the High Commissioner for Human Rights could arrange to have this document adopted and distributed as an official document of the upcoming fifty-seventh session of the Commission on Human Rights, under its agenda item on Economic, Social and Cultural Rights.

* Reproduced as received, in English and French only.

Why we reject SCR 1284

1. Iraq sincerely stresses that it has fulfilled during nine years, all the requirements of the security council resolutions, particularly resolution 687, in order to lift the embargo comprehensively and without additional restrictions or conditions. The resolution which was adopted does not meet Iraq's legitimate demand to lift the embargo.
2. The real purpose of America and Britain behind the resolution is not to lift the embargo, but to deceive the world public opinion because the suspension (the trick) mentioned in the American - British resolution confronts a long and complex series of new and ambiguous conditions that bear various explanation, making in effect, even this vile resolution empty of any guarantee of the suspension. More over, the timing contained therein is artificially long and exaggerated in such a manner that makes it consistent with the internal situation of America in the election year.
3. All these circumstances and conditions of this resolution make it a resolution of dubious political objectives. Furthermore, the resolution, in essence and format, is a re-writing of resolution 687 in a tendentious and illegal manner. This means that the security council does not observe its resolutions and does not implement its obligations under these resolutions, although resolution 687, which Iraq implemented, was one of the most unjust and abusive resolutions adopted by the security council (in its history) against Iraq.
4. The resolution aims at bringing back the Special Commission in a new disguise to Iraq in order to resume its intelligence activities.
5. The idea of suspension contained in the resolution is something strange and aims at misleading the international public opinion and has nothing to do with SCR 687 which stipulates in its para 20 on the lifting or reduction of sanctions, while, (suspension) does not mean lifting or reduction of sanctions.

6. The other dangerous element included in the resolution also is that the SC can halt the suspension upon receiving a report from the executive chairman of UNMOVIC. Accordingly the executive chairman has the powers to act as an absolute ruler, and the secretary general is just a consultative party, and what the executive chairman says goes.
7. The resolution comes up with a dangerous question which is the foreign investment in the oil sector. It requests the Secretary General to establish a group of oil experts to submit recommendations involving foreign oil companies in Iraq's oil sector including investments. This means a return to the pre-Nationalization Era.
8. When comparing 1284 with all SCRs we find that in spite of all which Iraq has implemented over a period of nine years and the aggression against it and the catastrophe inflicted on its population because of the continuation of the prohibitions in all its forms, Iraq will not be offered anything other than (suspension), which is not absolutely define and clear.
9. Resolution 1284 is an American - British attempt to re-write relevant SCR especially 687 and also represents an attempt by the SC to renege on its reciprocal commitments towards Iraq and resorting to trammel Iraq with further conditions.

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**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/124
18 January 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

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High Commissioner for Human Rights**

The Permanent Mission of the Republic of Iraq to the United Nations Office in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to enclose herewith the document entitled "Remarks on Kuwaiti Missing Persons". *

The Permanent Mission of the Republic of Iraq would be grateful if the High Commissioner for Human Rights could arrange to have this document distributed as an official document of the upcoming fifty-seventh session of the Commission on Human Rights, under its agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world".

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Annex

REPUBLIC OF IRAQ

Observations concerning Kuwaiti missing persons

April/May 2000

1. In accordance with Security Council resolution 686 of 2 March 1991, Iraq released all the prisoners and detainees held in Iraq, who were returned to their home countries with the help of the International Committee of the Red Cross. The total number of persons handed over in March 1991 amounted to 6,222. Iraq also returned the bodies of those who had died.
2. In its statements, the International Committee of the Red Cross affirmed that the total number of Kuwaitis and other Arab and foreign nationals (prisoners of war and civilians) who had been released by Iraq and handed over under ICRC supervision since the beginning of March 1991 amounted to 7,023 persons.
3. The work on this issue began with the approval and signature, at Riyadh on 12 April 1991, of the document entitled "Plan of action to ascertain the whereabouts and fate of missing military personnel and civilians" by the parties concerned. That document set forth the procedures for the gathering of information on missing persons, as well as the methods of dealing with individual files.
4. In 1992 and 1993, the Kuwaiti authorities submitted 627 files requesting the tracing of missing Kuwaitis and nationals of third countries. However, any attempt to shed light on the fate of those persons who, according to the Kuwaiti authorities, were missing obviously necessitated consultation of the files and dossiers of the agencies concerned in the southern and central governorates and it was common knowledge that all the official institutions in those governorates had been raided by subversive groups who had burned, destroyed or stolen all their documents, records and files. In fact, those groups destroyed all the governmental institutions in those governorates which, as everyone is aware, remained under their control for varying periods of time amounting, in some cases, to more than two weeks during which there was a total absence

of central authority. As a result, a large number of persons fled from the Iraqi detention centres located in those governorates after the outbreak of the disturbances there in the first week of March 1991. The vast majority of the testimonies contained in the files of missing Kuwaitis submitted by the Kuwaiti authorities stated that the persons concerned had last been seen in those very detention centres, affected by the disturbances, from which the Kuwaiti detainees had fled. In this connection, it is noteworthy that, at a press conference held in New York on 3 May 1995, Salem al-Sabah, the Chairman of the National Committee on Kuwaiti Prisoners of War and Missing Persons, said that: "Following the liberation of my country, Kuwait, there were more than 6,000 prisoners, not guilty of any crime, whom the Iraqi authorities were holding. By virtue of the uprising in the south, in the region of Basra, 5,772 prisoners were released. Some of these returned on foot while others sought refuge with the Red Cross and were subsequently returned to Kuwait." As a result, it became extremely difficult to ascertain the whereabouts of those missing persons.

5. Due to the above-mentioned circumstances, the Iraqi authorities were faced with the complex problem of replying to information. At the beginning of 1994, the authorities adopted the method of "recollection", which produced useful and practical information that was duly submitted to the Kuwaiti authorities through the International Committee of the Red Cross. As a result of the information obtained through this process of reliance on memory and the tracing endeavours made by the Tripartite Committee and the Technical Subcommittee, which were established on 8 December 1994, 29 individual files on Kuwaiti citizens and nationals of third countries were closed. One of these files concerned a female Kuwaiti citizen who was living a normal life in Iraq and returned to her family in Kuwait in 1996. The remains of another Kuwaiti missing person were returned during the same year. Many files were closed when the whereabouts of the persons concerned were established, most of them being found to be alive. However, the Kuwaiti authorities refused to acknowledge the true status of those persons. In short, the number of persons whom the Kuwaiti authorities claimed were missing diminished from 627 to 598 and the number of files under examination and on which preliminary information had been provided amounted to 301.

6. In 1996, in an endeavour to further the search for missing persons after the information derived from the process of "recollection" began to dwindle, the Iraqi authorities announced a number of initiatives, including the publication in April 1997 of the names and photographs of Kuwaiti and other missing persons on wall posters displayed in public places in the southern and

central Iraqi governorates affected by the disturbances. On 22 September 1996, appeals were made to citizens, through local Iraqi newspapers, to provide any available information on the whereabouts of missing persons. In addition, an Iraqi national committee, consisting of representatives of a number of non-governmental institutions, was established to examine and follow-up the cases of Iraqi and Kuwaiti missing persons in order to assist the competent authorities in their endeavours to trace those missing persons.

7. As a result of this campaign, the Iraqi authorities obtained preliminary information to the effect that, when a hostile Saudi aircraft was shot down at al-Radhi in Iraq in February 1991, an Iraqi officer buried some of the remains of its pilot in a desert area near the Iraqi-Saudi border. Preparations are currently being made in Iraq and Saudi Arabia to search for those remains in the said desert area under the auspices of the International Committee of the Red Cross.

8. As a token of its cooperation in the quest for missing persons, on 9 December 1995 Iraq received an American team with which it conducted a joint search, under the auspices of the International Committee of the Red Cross, for the remains of an American pilot whose aircraft was shot down by Iraqi air defence units during the attack on Iraq in 1991. The wreckage of the American aircraft was found, together with evidence at the site of the crash which confirmed that the American pilot had been killed.

9. Iraq has declared its constant willingness to work in accordance with international rules and remains receptive to any initiative put forward by States and organizations which are not members of the said Committee with a view to finding a final and rapid solution to this humanitarian issue. Although Iraq has agreed to initiatives proposed by the League of Arab States, Morocco, Qatar, Russia, Indonesia and the European Parliament, Kuwait has rejected those initiatives.

10. Iraq's position in regard to the Tripartite Committee: Due to the circumstances resulting from the attack launched against Iraq on 16 December 1998 by the United Kingdom and the United States of America, which are members of the Tripartite Committee and the Technical Subcommittee, Iraq informed the International Committee of the Red Cross on 30 January 1999 that it was unable to participate in the meetings of those two committees. While explaining its position to the International Committee of the Red Cross, Iraq emphasized the following points:

(a) The issue of missing persons was a humanitarian issue that needed to be solved on the basis of international humanitarian law, its solution being in Iraq's interests.

(b) The reason for the failure to achieve the objectives of the work on that file were attributable to the political motives of other members of the Tripartite Committee which were continuing to politicize the humanitarian issue of missing persons.

(c) Two States members of the Tripartite Committee had launched a large-scale and devastating attack against Iraq in consequence of which continuation of the humanitarian work with those two States for the achievement of humanitarian objectives became unrealistic since that attack was an inappropriate way to create and further the climate of confidence needed to achieve decisive results.

Accordingly, Iraq indicated that it would not recognize the so-called "Coalition" formula, particularly since that formula included three States (France, the United Kingdom and the United States of America), which did not have individual files for the tracing of missing persons holding their nationality.

At the same time, Iraq emphasized that it would continue to inquire into the whereabouts of missing Kuwaitis and nationals of third States in collaboration with the International Committee of the Red Cross and the States members of the Committee which actually had files on missing persons.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/125
31 January 2001

ENGLISH
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Note by the Secretariat

Impunity

1. The report of the Secretary-General contained in document E/CN.4/2001/88 was submitted to the current session of the Commission on Human Rights in accordance with Commission resolution 2000/68, entitled "Impunity". The replies subsequently received from Turkey, Bolivia, Germany and Morocco were not included in the report owing to their late submission. They will be considered in the next report of the Secretary-General to the Commission on Human Rights. These replies are available for consultation in the files of the Secretariat.

Human rights and bioethics

2. The report of the Secretary-General contained in document E/CN.4/2001/93 was submitted to the current session of the Commission on Human Rights in accordance with Commission resolution 1999/63, entitled "Human rights and bioethics". The replies received from Germany, Sweden, France, Turkey and Guatemala were not included in the report owing to their late submission. They will be considered in the next report of the Secretary-General to the Commission on Human Rights. These replies are available for consultation in the files of the Secretariat.
